RESOLUTION NO. R-2012-58

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, BETWEEN THE CITY OF NORTH MIAMI AND CDM SMITH, INC., AS CONTRACTOR FOR THE PROVISION OF CIVIL ENGINEERING SERVICES FOR THE VOLUME SANITARY SEWER CUSTOMER ORDINANCE COMPLIANCE SERVICES PROJECT, IN ACCORDANCE WITH REQUEST FOR QUALIFICATIONS NO. 38-09-10, CONTINUING PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.

WHEREAS, on June 3, 2010, the City advertised ***Request for Qualifications #38-09-10, Continuing Professional Architectural & Engineering Services*** ("RFQ"), for the purpose of retaining experienced, licensed and insured architectural and engineering firms to provide on a continuing, as-needed basis, the following specific services: Architecture, Landscape Architecture, Civil Engineering, Panning and Urban Design, Traffic Engineering and Transportation Consulting, and Water Resource/Water Supply Related Services; and

WHEREAS, the RFQ was undertaken in accordance with Florida's Consultants' Competitive Negotiation Act, Section 287.055, Florida Statues; and

WHEREAS, CDM Smith, Inc. ("Contractor") submitted its sealed qualifications for the provision of professional Civil Engineering Services, and was subsequently selected by City administration as having those qualifications and references most advantageous to the City; and

WHEREAS, on September 15, 2010, the City Council of the City of North Miami, passed and adopted Resolution No. 2010-88, approving the selection of Contractor for the provision of Services; and

WHEREAS, the City is in need of professional Civil Engineering Services for the Volume Sanitary Sewer Customer Ordinance ("VSCO") Compliance Services Project ("Services"), in accordance with the provisions of the RFQ; and

WHEREAS, the City administration respectfully requests that the Mayor and City Council of the City of North Miami, authorize the execution of an agreement with Contractor for the provision of the required Services.

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

Section 1. **Selection Approval.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager to execute an agreement, in substantially the attached form, between the City of North Miami and CDM Smith, Inc., as contractor for the provision of Civil Engineering Services for the Volume Sanitary Sewer Customer Ordinance Compliance Services Project, in accordance with Request for Qualifications No. 38-09-10, Continuing Professional Architectural and Engineering 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 8 day of May, 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: Councilman Blynn

Seconded by: Councilwoman Steril

Vote:

Mayor Andre D. Pierre, Esq.	x (Yes)	____ (No)
Vice Mayor Jean R. Marcellus	x (Yes)	____ (No)
Councilperson Michael R. Blynn, Esq.	x (Yes)	____ (No)
Councilperson Scott Galvin	x (Yes)	____ (No)
Councilperson Marie Erlande Steril	x (Yes)	____ (No)

CITY OF NORTH MIAMI
ARCHITECTURAL & ENGINEERING
CONTINUING SERVICES AGREEMENT
(RFQ #38-09-10; Civil Engineering #000174 / Work Order #3)

THIS PROFESSIONAL ARCHITECTURAL & ENGINEERING CONTINUING SERVICES AGREEMENT ("Agreement") is entered into this _____ day of _____, 2012, between the **City of North Miami**, a Florida municipal corporation with a principal address of 776 NE 125th Street, North Miami, Florida ("City"), and **CDM Smith, Inc.**, a foreign for-profit corporation organized and existing under the laws of the State of Florida, having its principal office at One Cambridge Place, 50 Hampshire Street, Cambridge, MA 02139 ("Contractor"). The City and Contractor shall collectively be referred to as the "Parties".

RECITALS

WHEREAS, on June 3, 2010, the City advertised **Request for Qualifications No. 38-09-10, Continuing Professional Architectural and Engineering Services** ("RFQ"), for the purpose of retaining a pool of experienced, licensed and insured architectural/engineering firms to provide on a continuing, as-needed basis, the following professional architectural/engineering services: Architecture, Civil Engineering, Environmental Engineering, Planning and Urban Design, Water Resources/Water Supply, Traffic Engineering and Transportation Consulting, and other related services as specified in the RFQ; and

WHEREAS, the RFQ was administered in accordance with the State of Florida's Consultants' Competitive Negotiation Act, Section 287.055, Florida Statues; and

WHEREAS, in response to the RFQ, Contractor submitted its sealed qualifications for the provision of professional Civil Engineering services, and was subsequently selected by City administration as having those qualifications and references most advantageous to the City; and

WHEREAS, on September 15, 2010, the Mayor and City Council of the City of North Miami, passed and adopted Resolution No. 2010-88, approving the selection of Contractor for the provision of Services; and

WHEREAS, the City is in need of professional Civil Engineering services for the Volume Sanitary Sewer Customer Ordinance ("VSCO") Compliance Services Project ("Services"), in accordance with the provisions of the RFQ; and

WHEREAS, the City Manager finds that entering into an agreement with Contractor for the provision of Services, is in the City's best interests.

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 a part of this Agreement (collectively referred to as the "Contract Documents"):

2.1.1 The City's Request for Qualifications No. 38-09-10, Continuing Professional Architectural and Engineering Services, attached hereto by reference;

2.1.2 Contractor's proposal and scope of work for the Civil Engineering for the Volume Sanitary Sewer Customer Ordinance Compliance Services Project, dated March 12, 2012 ("Proposal"), attached hereto as Exhibit "A";

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

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 RFQ.

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

ARTICLE 3 – TERM

3.1 Subject to authorized adjustments, the Term of this Agreement shall be one (1) year from the date specified in the Notice to Proceed, unless terminated earlier by the City. 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 time for performance. Failure to achieve timely final completion shall be regarded as a material breach of this Agreement and shall be subject to the appropriate remedies available at law. This Agreement shall remain in full force and effect until the completion of Services by the Contractor and the acceptance of Services by the City.

3.2 Minor adjustments to the time for performance which are approved in writing by the City in advance, shall not constitute non-performance by Contractor. Any impact on the time for performance shall be determined and the time schedule for completion of Services will be modified accordingly.

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 One Hundred Forty-Four Thousand Five Hundred Ten and No/100 Dollars ($144,510.00) as full compensation for Services, pursuant to Contract Documents. Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Contractor.

ARTICLE 5 - SCOPE OF SERVICES

5.1 Contractor agrees to perform Services for the benefit of the City under the special terms, schedules, and conditions set forth in the Contract Documents. Contractor shall perform Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

5.2 One or more changes to the Services within the general scope of this Agreement may be ordered by Change Order. A Change Order shall mean a written order to the Contractor executed by the Parties after execution of this Agreement. The Contractor shall proceed with any such changes, and they shall be accomplished in strict accordance with the Contract Documents and the terms and conditions described in this Agreement.

5.3 Contractor represents and warrants to the City that: (i) Contractor possesses all qualifications, licenses and expertise required in 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 as described in the Contract Documents for the budgeted amounts, rates and schedules; and (v) the person executing this Agreement on behalf of Contractor is duly authorized to execute same and fully bind Contractor as a party to this Agreement.

5.4 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. Any work performed for Contractor by a subcontractor will be pursuant to an appropriate agreement between Contractor and subcontractor which specifically binds the subcontractor to all applicable terms and conditions of the Contract Documents.

ARTICLE 6 - CITY'S TERMINATION RIGHTS

6.1 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 7 - INDEPENDENT CONTRACTOR

7.1 Contractor, its employees and agents shall be deemed to be independent contractors and not agents or employees of the City and shall not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights generally afforded to classified or unclassified employees. The Contractor shall not be deemed entitled to the Florida Workers' Compensation benefits as an employee of the City.

ARTICLE 8 - DEFAULT

8.1 In the event the Contractor fails to comply with any provision of this Agreement, the City may declare the Contractor in default by written notification. The City shall have the right to terminate this Agreement if the Contractor fails to cure the default within ten (10) days after receiving notice of default from the City. If the Contractor fails to cure the default, the Contractor will only be compensated for completed Services. In the event partial payment has been made for such Services not completed, the Contractor shall return such sums due to the City within ten (10) days after notice that such sums are due. The 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 - ENGINEER'S ERRORS AND OMISSIONS

9.1 Contractor shall be responsible for technically deficient designs, reports, or studies due to Contractor's errors and omissions, and shall promptly correct or replace all such deficient design work without cost to City. The Contractor shall also be responsible for all damages resulting from such errors and omissions. Payment in full by the City for Services performed does not constitute a waiver of this representation.

ARTICLE 10 - INDEMNIFICATION

10.1 Contractor agrees to indemnify, defend, save and hold harmless the City its officers, agents and employees, from and against any and all claims, liabilities, suits, losses, claims, fines, and/or causes of action that may be brought against the City, its officers, agents and employees, on account of any negligent act or omission of Contractor, its agents, servants, or employees in the performance of Services under this Agreement and resulting in personal injury, loss of life or damage to property sustained by any person or entity, caused by or arising out of Contractor's negligence within the scope of this Agreement, including all costs, reasonable attorneys fees, expenses, including any appeal, and including the investigations and defense of any action or proceeding and any order, judgment, or decree which may be entered in any such action or proceeding, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of the City, its officer, agents, employees or contractors, which claims are lodged by any person, firm, or corporation.

10.2 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 11 - INSURANCE

11.1 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 or additional insured with respect to the required coverage and the operations of the Contractor under this Agreement. Contractor shall not commence work under this Agreement until after Contractor has obtained all of the minimum insurance described in the RFQ and the policies of such insurance detailing the provisions of coverage have been received and approved by the City. Contractor shall not permit any subcontractor to begin work until after similar minimum insurance to cover subcontractor has been obtained and approved. 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 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.

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

ARTICLE 12 - OWNERSHIP OF DOCUMENTS

12.1 All documents developed by Contractor under this Agreement shall be delivered to the City by the Contractor upon completion of the Services and shall become property of the City, without restriction or limitation of its use. The Contractor agrees that all documents generated hereto shall be subject to the applicable provisions of the Public Records Law, Chapter 119, Florida Statutes. In the event the Agreement is terminated, Contractor agrees to provide the City all such documents within 10 days from the date the Agreement is terminated.

12.2 It is further understood by and between the Parties that any information, writings, tapes, Contract Documents, reports or any other matter whatsoever which is given by the City to the Contractor pursuant to this Agreement shall at all times remain the property of the City and shall not be used by the Contractor for any other purposes whatsoever without the written consent of the City.

ARTICLE 13 - NOTICES

13.1 All notices, demands, correspondence and other communications between the Parties 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 or as the same may be changed from time to time:

For Contractor: CDM Smith, Inc.
One Cambridge Place
50 Hampshire Street
Cambridge, MA 02139
Phone: _____
Fax: _____

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

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

13.2 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.

13.3 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 14 - MISCELLANEOUS PROVISIONS

14.1 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.

14.2 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.

14.3 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.

14.4 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.

14.5 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. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

14.6 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue for any litigation, which may arise in connection with this Agreement, shall be in Miami-Dade County, Florida.

14.7 The City reserves the right to audit Contractor's records 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.

14.8 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.

14.9 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.

14.10 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.

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

14.12 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.

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

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

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

ATTEST:
Corporate Secretary or Witness:

By: _____

Print Name: _____

Date: _____

CDM Smith, Inc., a foreign for-profit corporation
"**Contractor**":

By: _____

Print Name: _____

Date: _____

ATTEST:

By: _____
Michael A. Etienne
City Clerk

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

By: _____
Stephen E. Johnson
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Regine M. Monestime
City Attorney