

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is made as of this ____ day of _____, 2016, between the City of Coral Gables (hereinafter called the "City"), and CDM Smith, Inc. (hereinafter called the "Professional").

RECITALS

WHEREAS, City desires to enter into an agreement with the Professional to provide basic environmental and engineering design services to the City; and

WHEREAS, the City having investigated the qualifications of the Professional to perform the services herein contemplated and found those qualifications satisfactory; and

WHEREAS, the Professional having examined the scope of the services required hereunder and having expressed desire and willingness to provide such services and having presented qualifications to the City in support of those expressed desires; and

WHEREAS, the Professional agrees to accept this Agreement upon the terms and conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the City agrees to retain the Professional to provide architectural design services to the City.

I. GENERAL PROVISIONS

This Agreement incorporates and supersedes all previous agreements, written and oral, and all prior and contemporaneous communications between the parties, regarding this subject. The City reserves the right to initiate change to any provision of this Agreement. All such changes shall be accomplished only by mutually signed Amendments.

The Professional shall perform the services as specifically stated in the Scope of Services, which is attached hereto and incorporated herein as Exhibit A, and as may be specifically designated and authorized by the City.

The professional shall perform the services as specifically stated in the Scope of Services, which is attached hereto and incorporated herein as Exhibit A, and as may be specifically designed and authorized by the City.

1.1 Engagement. The City agrees to engage the Professional for a period specified in paragraph 1.2, and the Professional agrees to accept such engagement and to

employee/agent's driving record from the State of Florida, at Professional's (contractor's) expense.

1.5 Confidential Information. The Professional agrees that any information received by the Professional for the City and in providing services in accordance with this Agreement which is not publicly available, shall not be revealed to any other persons, firm or organizations.

1.6 Most Favored Public Entity. The Professional represents that the prices charged to City in this Agreement do not exceed existing prices to other customers for the same or substantially similar items or services for comparable quantities under similar terms and conditions. If Professional's prices decline, or should Professional, at any time during the term of this Agreement, provide the same goods or services to any other customer at prices below those set forth herein, then such lower prices shall be immediately extended to the City.

II. PROFESSIONAL SERVICES

2.1 Basic Services. The duties and responsibilities are outlined in Section 1.3.

2.2 Reporting. The Professional shall comply with the necessary reporting requirements as outlined by the Director or designee for review. In addition, the Professional shall submit a monthly report to the Director or designee, which shall include detailed information regarding the activities of the Professional during the previous month.

2.3 Availability of Professional. The Professional shall make all documents available 24 hours a day, 7 days a week, 365 days a year, in order to satisfy the City's emergency demands for continued, non-interrupted service.

III. COMPENSATION

3.1 Basic Compensation. In full consideration of the services of the Professional hereunder, the Professional shall be paid at a rate stipulated for each of the services described on the RFQ pricing schedule (Exhibit C), attached. The City reserves the right to contract with the Professional for additional services. The Consultant agrees to negotiate a "Not to Exceed" fixed sum fee for each work order based on the Scope of Work. Work assigned under this continuing contract will not exceed \$2,000,000 for construction or \$200,000 for a study pursuant to Florida Statute 287.055, the Consultants Competitive Negotiation Act".

3.2 Expenses. As part of, and in addition to the basic compensation described in this Agreement, the City shall provide the Professional with no additional compensation for any services performed in fulfilling the requirements of this Agreement. All additional requested expenses must be pre-approved through the Director or designee.

4.2.4 Moreover, nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes, case law, or any other source of law.

V. INSURANCE

5.1 Pursuant to the City of Coral Gables Code, Section 2-1007, the Risk Management Division of the Human Resources Department has developed the following insurance requirements to protect the City of Coral Gables to the maximum extent feasible against any and all claims that could significantly affect the ability of the City to continue to fulfill its obligations and responsibilities to the taxpayers and the public. Consequently, prior to commencing work, the Professional shall procure, and provide the City with evidence of insurance coverage as required herein and name the City as an Additional Insured on a primary and non-contributory basis. The Professional shall secure and maintain, at its own expense, and keep in effect during the full period of the contract a policy or policies of insurance, and must submit these documents to the Risk Management Division of Human Resources Department for review and approval.

5.2 Insurer Requirements. The Professional shall maintain, at its own cost and expense, the following types and amounts of insurance with insurers with rating of "A-" "VI" or better according to the A.M. Best rating guide as a minimum standard. The insurers providing coverage must be approved by the State of Florida and hold all of the required licenses in good standing to conduct business within the State of Florida. In addition, they must be acceptable to the City of Coral Gables Risk Management Division and/or the City Attorney's Office.

5.3 Type of Coverage & Limit of Liability Requirement.

Workers' Compensation and Employers Liability Insurance covering all employees, sub consultants, and/or volunteers of the Professional and/or Vendor engaged in the performance of the scope of work associated with this contract and/or agreement. The minimum limits of liability shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation insurance, with the following limits:

Workers' Compensation - Coverage A
Statutory Limits (State of Florida or Federal Act)

Employers' Liability - Coverage B
\$1,000,000 Limit - Each Accident
\$1,000,000 Limit - Disease each Employee
\$1,000,000 Limit - Disease Policy Limit

Commercial General Liability Insurance written on an occurrence basis including, but not limited to; Coverage for contractual liability, products

Additional insured status provided on a primary & non-contributory basis (except for Workers Compensation Insurance and Professional Liability Insurance)

Waiver of Subrogation for all required insurance coverages.

Notices of Cancellation/Non-renewal/Material Changes on any required insurance coverage must be sent directly to the City of Coral Gables by the Insurance Company. The City only requires the same statutory notice that an insurance company must provide to the insured, however this Notice may not be less than Thirty (30) Days, except a Ten (10) Day Notice of cancellation is acceptable for non-payment of premium.

Notices of Cancellation, Non-renewal or Material Change must be provided to the following address:

CITY OF CORAL GABLES
INSURANCE COMPLIANCE
P.O. BOX 12010-CE
HEMET, CA 92546-8010

All policies shall contain a “severability of interest” or “cross liability” clause without obligation for premium payment of the City.

5.6 How To Evidence Coverage To The City.

The following documents must be provided to the City;

A Certificate of Insurance containing the following information:

Issued to entity contracting with the City

Evidencing the appropriate Coverage

Evidencing the required Limits of Liability required

Evidencing that coverage is currently in force

Language provided in the Special Provision Section of the Certificate of Insurance affirming that all endorsements required by the City have been endorsed to all of the policies.

A copy of each endorsement that is required by the City

All Certificates of Insurance must be signed by a person authorized by that insurer to bind or amend coverage on its behalf

The City reserves the right to require a complete copy of any insurance policies required by the City. Should the City invoke this right, the policy must be provided directly to the City by the insurance agent or insurance company.

The city reserves the right to require additional insurance requirements at any time during the course of the agreement.

- a. Claims based upon any alleged breach by the CITY of implied warranties or representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the CITY. All obligations of the CITY are only as set forth in this Agreement;
- b. Claims based upon negligence or any tort arising out of this Agreement;
- c. Claims upon alleged acts or inaction by the City, its commissioners, attorneys, administrators, consultants, agents, or any CITY employee;
- d. Claims based upon an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by an authorized representative for the CITY and PROFESSIONAL.

VII. STANDARD OF CARE

7.1 The Professional shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily provided by a comparable professional under similar circumstances and the Professional shall, at no additional cost to the City, re-perform services which fail to satisfy the foregoing standard of care.

7.2 The Professional services shall be performed by skilled and competent personnel duly registered to perform them.

VIII. NON-DISCRIMINATION

8.1 EEO and ADA: The Professional must be and remain in compliance with all local, state and federal Equal Employment Opportunity (EEO) and American Disabilities Act (ADA) requirements.

8.2 It is understood that the Professional shall not discriminate against any employee in the performance of the contract with respect to hire, tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment because of age, marital status, race, color, religion, national origin, sex, or disability.

8.3 City Policy Regarding Conduct. All contractors, their employees, agents and subcontractors must abide by the City's policies regarding conduct. Discrimination, harassment, and/or violations of City policies will not be tolerated and are grounds for termination of the Agreement without harm to the City or its employees.

IX. CONFLICT OF INTEREST

9.1 The Professional represents that it has provided a list of all current clients subject to the jurisdiction of the City. Any potential or actual conflict between private interests and responsibilities under this Agreement shall be immediately disclosed to the City.

Notice as to the Professional shall be to: CDM Smith, Inc.
800 Brickell Ave Suite #500
Miami, FL 33131

XIV.DEFAULT AND TERMINATION

14.1 The City may terminate this Agreement for convenience at any time by providing thirty (30) days written notice to the Professional. If the professional is found by the City to fail in the performance of their duties as stipulated in this agreement, The City will provide a written notice to the professional stating the deficiencies the professional will have thirty (30) days to cure the deficiency after which the City will proceed to termination if said deficiencies have not be corrected. In the event of a termination for cause, due to the Professional's failure to perform in accordance with the terms of this Agreement or the Professional's repudiation of this Agreement by word or conduct. The City may immediately terminate the Agreement if after the 30 day cure period the professional has not corrected the deficiency and the Professional shall be paid any sums otherwise due and owing under this Agreement only after City has completed the work called for by this Agreement with other forces, and has deducted the cost of such work, and any other damages payable to City, from any contract balance otherwise due and owing to the Professional under this Agreement. In the event of a termination for convenience, the Professional shall be paid for all services performed through the date of termination, based on the percentage of services completed (subject to applicable setoff rights) and the Professional shall not be entitled to any other compensation or damages from the City. If, after notice of termination for cause, it is determined for any reason that Professional was not in default, the rights and obligations of the City and the Professional shall be the same as though the termination had been a termination for convenience. In no event shall the City be liable to Professional for lost profits on any work not performed, overhead, or any other type of consequential, special or indirect damages, and Professional hereby waives the same. Professional may terminate this Agreement due to the City's failure to comply with the material terms of this Agreement after giving City thirty (30) days written notice of its purported default and a reasonable opportunity to cure. Upon termination of this Agreement, all schematics, designs, plans, specifications, documents, records, disks, or other information (including electronic copies) produced or developed by Professional or subconsultants, whether finished or not, shall become City property. Failure to timely deliver the documentation shall be cause to withhold any payments due, without recourse by the Professional, until all documentation is delivered to the City.

XV.UNCONTROLLABLE FORCES

15.1 Neither the City nor Professional shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It

books, records, and documents as required in this section for the purpose of inspection or audit during normal working business hours at the Professional's place of business.

In the event that an audit is conducted by Professional specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by Professional, then Professional shall file a copy of the audit report with the City's Auditor within thirty (30) days of Professional's receipt thereof, unless otherwise provided by applicable Federal or State law. City shall make a reasonable effort to maintain the confidentiality of such audit report(s).

Failure on the part of Professional to comply with the provisions of this Paragraph 18.1 shall constitute a material breach upon which the City may terminate or suspend this Agreement.

18.2 City Audit Settlements. If, at any time during or after the term of this Agreement, representatives of the City conduct an audit of Professional regarding the work performed under this Agreement, and if such audit finds that City's dollar liability for any such work is less than payments made by City to Professional, then the difference shall be either repaid by Professional to City by cash payment upon demand or, at the sole option of City, deducted from any amounts due to Professional from City. If such audit finds that City's dollar liability for such work is more than the payments made by City to Professional, then the difference shall be paid to Professional by cash payment.

XIX. AVAILABILITY OF FUNDS

19.1 The obligations of the City under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the City Commission.

XX. COMPLIANCE WITH LAWS

20.1 In performance of the services, the Professional will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards. It shall be the responsibility of the Professional to obtain and maintain, at no cost to the City, any and all license and permits required to complete the services provided pursuant to this Agreement.

20.2 Conflict of Interest. Professional covenants that no person employed by the Professional which exercises any functions or responsibilities in connection with this Agreement has any personal financial interests direct or indirect with the City. Professional further covenants that, in the performance of this Agreement, no person having a conflicting interest shall be employed. Any such interests on the part of Professional or its employees must be disclosed in writing to City.

20.3 Professional is aware of the conflict of interest code of the City of Coral Gables, the Conflict of Interest and Code of Ethics of Miami-Dade County, Florida,

25.1 This Agreement may be executed simultaneously in several counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

XXVI. WAIVER

26.1 A waiver by either the City or the Professional of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

XXVII. SEVERABILITY, SURVIVAL

27.1 If any provision of this Agreement is found to be void and unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall nevertheless be binding upon the parties with the same effect as though the void or unenforceable provision had been severed and deleted.

XXVIII. GOVERNING LAW AND VENUE

28.1 The laws of the State of Florida shall govern this Agreement. Any and all legal action necessary to enforce the Agreement will be held in Miami-Dade County, and the Agreement will be interpreted according to the laws of Florida.

28.2 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way effect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement, and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

28.3 The provisions of this section shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Approved as to Insurance:

AS TO CITY:

David J. Ruiz
Risk Management Division

Catherine Swanson-Rivenbark
City Manager

Approved by Department Head
or head of negotiations team as to
the negotiated business terms

ATTEST:

Glenn Kephart
Director, Public Works

Walter J. Foeman
City Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Approved as to compliance with
Applicable Procurement Requirements:

Craig E. Leen
City Attorney

Michael P. Pounds,
Chief Procurement Officer

Approved as to Funds Appropriation:

Diana M. Gomez, Finance Director

ATTEST:

AS TO PROFESSIONAL

Corporate Secretary

Ignacio Lizama
President ~~ASSOCIATE~~
CDM Smith, Inc.

Print Name: _____

Print Name: IGNACIO LIZAMA

(SEAL)

(OR)
WITNESSES (2):

Print Name: Carlos Rodriguez Canino

Print Name: LAYLA L. LLENDEYN

RFQ 2015.09.04 Environmental Engineering Consultant

EXHIBIT 'C'

PRICING SCHEDULE

Upon agreement of a fee, the Director of Public Works or his/her designee, will issue a written authorization to proceed to the Consultant, In the case of an emergency, the CITY reserves the right to issue oral authorization to the CONSULTANT with the understanding that written confirmation will follow immediately thereafter. The CITY reserves the right to contract with the consultant for additional services. Any increase in the agreed upon amount shall be approved by the Public Works director or designee, and shall be in accordance with applicable CITY and State regulations.

The fees for professional services for each of the WORK shall be determined by one of the following methods or a combination thereof, as mutually agreed upon by the CITY and the Consultant.

Multiple of Direct Salary expense: The "Not to Exceed" fee may be based on multiple of 2.7 times the salary rate, as determined from salaries reported to the Director of Internal Revenue, of the personnel engaged directly on a project, such multiplied rate not to exceed \$215.00 dollars per hour by either principles or employees.

Fixed Sum (Lump Sum): The fee for a task or Scope of Work may be fixed sum as mutually agreed upon by the CITY and the CONSULTANT.

Hourly Rate Fee: The CITY agrees to pay , and the consultant agrees to accept, for the services rendered pursuant to this agreement. Fees in accordance with the following:

<u>Category</u>	<u>Hourly Rates</u>
• Principal	\$215.00
• Project Manager	\$176.00
• Senior Engineering (P.E)	\$160.00
• Project Engineering	\$126.00
• Environmental Specialist	\$125.00
• Construction Inspector	\$82.50
• CADD Technician	\$66.00
• Clerical	\$50.60
• Multiplier	2.7



Representative Authorized Signature / Title

ASSOCIATE

5/9/2016

Date