

To: The Honorable Mayor and Council Members

From: Wisler Pierre-Louis, P.E., Public Works Director



Date: October 28, 2014

RE: **A RESOLUTION OF THE VICE MAYOR AS ACTING MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE AND EXECUTE AN AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND KITTLESON & ASSOCIATES, INC., AS THE CONSULTANT FOR THE PROVISION OF TRAFFIC ENGINEERING SERVICES FOR THE NE 125TH ST. CORRIDOR MULTI-MODAL IMPROVEMENTS STUDY, IN ACCORDANCE WITH REQUEST FOR QUALIFICATIONS NO. 38-09-10 CONTINUING PROFESSIONAL AND ARCHITECTURAL AND ENGINEERING SERVICES, IN THE AMOUNT NOT TO EXCEED ONE HUNDRED AND TWENTY THOUSAND DOLLARS (\$120,000); PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.**

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**RECOMMENDATION**

Staff is requesting that the Vice Mayor Acting as Mayor and City Council, hereby authorize the City Manager and City Attorney to negotiate and execute an agreement between the City of North Miami and Kittleson & Associates, Inc., as the consultant for the provision of traffic engineering services for the NE 125th St. Corridor Multi-Modal Improvements Study, in accordance with Request for Qualifications No. 38-09-10 Continuing Professional and Architectural and engineering Services, in the amount not to exceed one hundred and twenty thousand Dollars (\$120,000).

**BACKGROUND**

The NE 125<sup>th</sup> Street corridor is the heart of North Miami's Downtown commercial district. However, it is also a State road and is therefore a regionally important road for residents of Northeast Miami-Dade County. This study, funded by a \$100,000 grant from the Metropolitan Planning Organization and a matching \$20,000 from the City's portion of the Half-Cent Transportation Surtax fund, will investigate options to improve the multi-modal aspects of the

corridor. The goal is to improve the pedestrian, bicycle, and transit experience while accommodating, and capturing, the 35,000 cars that traverse the corridor every day.

The residents, business owners and elected officials of the City are committed to making the NE 125th Street corridor a place that encourages people now driving through the city to stop, get out of their cars, walk around, stay a while, and perhaps even come back and invest in a business or new home. But this cannot be accomplished by simply wishing fewer cars came through or by creating a traffic nightmare.

Therefore, the goal of this project is to analyze the current circulation patterns of the greater downtown area and identify potential improvements that can lead to more dispersed vehicular traffic and greater efficiencies in transit operations – regional, county, and local. These improvements will then allow for greater flexibility along the NE 125th Street Corridor and lead to a more “Complete Street” for the entire community. As part of the analysis the consultants will examine reducing lanes from 4 to 2 lanes in the downtown core, among other alternatives.

The foundation is already there – a historic downtown with pedestrian-scaled businesses set close to streets with on-street parking in front and public parking in the back. The proper land use planning and zoning is also in place, requiring mixed-use development, allowing high-density/tall buildings, reducing minimum parking and providing many other incentives for transit-oriented development. What’s missing is a transportation circulation plan to allow these things to happen.

The area is served well by Miami-Dade Transit buses. There are 5 bus routes traversing the area and they are focused on the intersection of NE 125th Street, NE 6th Ave, and West Dixie Highway. The transit stops at the intersection in all directions (southbound, northbound, eastbound, westbound) are the busiest stops in the City with the exception of Biscayne Boulevard and NE 123rd ST.

Recommendations made in this study would be incorporated into other efforts the City is undertaking to improve downtown, including a master plan and revised CRA Redevelopment Plan, and to serve as justification for the inclusion of transportation improvements into the 2040 Long Range Transportation Plan.

### **FUNDING SOURCE**

Funding for this service is through a \$100,000 Miami-Dade Metropolitan Planning Organization grant and \$20,000 from the Half-Cent Surtax funds.

### **ATTACHMENT(S)**

Resolution  
Scope of Work

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE VICE MAYOR AS ACTING 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 KITTELSON & ASSOCIATES, INC., AS THE CONSULTANT FOR THE PROVISION OF TRAFFIC ENGINEERING AND TRANSPORTATION CONSULTING SERVICES, FOR THE PROPOSED NORTHEAST 125<sup>TH</sup> STREET CORRIDOR MULTI-MODAL IMPROVEMENT PROJECT, IN ACCORDANCE WITH REQUEST FOR QUALIFICATIONS NO. 38-09-10 CONTINUING PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES, FOR THE ESTIMATED AMOUNT OF ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00) FUNDED BY THE MIAMI-DADE METROPOLITAN PLANNING ORGANIZATION GRANT AND THE HALF-CENT TRANSPORTATION SURTAX; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

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

WHEREAS, the RFQ was undertaken in accordance with Florida’s Consultants’ Competitive Negotiation Act, under Section 287.055, Florida Statutes; and

WHEREAS, in response to the RFQ, Kittelson & Associates, Inc. (“Consultant”) submitted its sealed credentials and was 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 passed and adopted Resolution No. 2010-88, approving the selection of Consultant for Traffic Engineering and

Transportation Consulting Services (“Services”), on a continuing-contractual basis, pursuant to the terms conditions and specifications contained in the RFQ; and

**WHEREAS**, the City is in need of Services to analyze the current circulation patterns of the greater downtown area and identify potential improvements to disperse vehicular traffic and achieve greater efficiencies in transit operations, with the aim of enhancing pedestrian, bicycle and transit oriented experiences, while accommodating approximately thirty-five thousand (35,000) vehicles traversing the corridor on a daily basis; and

**WHEREAS**, Services are expected to cost the City approximately One Hundred Twenty Thousand Dollars (\$120,000.00) obtained from the following funding sources: Miami-Dade Metropolitan Planning Organization Grant, with One Hundred Thousand Dollars (\$100,000.00); and the Half-Cent Transportation Surtax, with Twenty Thousand Dollars (\$20,000.00); and

**WHEREAS**, the City administration respectfully requests that the Vice Mayor as Acting Mayor and City Council authorize the City Manager to execute an agreement, in substantially the attached form, for the attainment of Services in furtherance of the public’s health, safety and welfare.

**NOW THEREFORE, BE IT RESOLVED BY THE VICE MAYOR AS ACTING MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:**

**Section 1.** **Authority of City Manager.** The Vice Mayor as Acting 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 Kittelson & Associates, Inc., as the Consultant for the provision of Traffic Engineering and Transportation Consulting Services, for the proposed Northeast 125<sup>th</sup> Street Corridor Multi-Modal Improvement Project, in accordance with *Request for Qualifications No. 38-09-10 Continuing Professional Architectural and Engineering Services*, for the estimated amount of One Hundred Twenty Thousand Dollars (\$120,000.00), funded by the Miami-Dade Metropolitan Planning Organization Grant and the Half-Cent Transportation Surtax.

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

**PASSED AND ADOPTED** by a \_\_\_\_\_ vote of the Vice Mayor as Acting Mayor and City Council of the City of North Miami, Florida, this \_\_\_\_\_ day of October, 2014.

\_\_\_\_\_  
PHILIPPE BIEN-AIME  
VICE MAYOR AS ACTING 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: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Vote:**

Vice Mayor as Acting Mayor Philippe Bien-Aime  
Councilperson Scott Galvin  
Councilperson Carol Keys, Esq.  
Councilperson Marie Erlande Steril

\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)  
\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)  
\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)  
\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

**CITY OF NORTH MIAMI  
ARCHITECTURAL & ENGINEERING  
CONTINUING SERVICES AGREEMENT  
(RFQ #38-09-10; Traffic Engineering Services)**

**THIS PROFESSIONAL ARCHITECTURAL & ENGINEERING CONTINUING SERVICES AGREEMENT** (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, between the **City of North Miami**, a Florida municipal corporation with a principal address of 776 NE 125<sup>th</sup> Street, North Miami, Florida (“City”), and **Kittelson & Associates, Inc.**, a foreign for-profit corporation registered and authorized to do business under the laws of the State of Florida, having its principal office at 610 SW Alder Street, #700, Portland, OR 97205 (“Consultant”). The City and Consultant shall collectively be referred to as the “Parties”, and each may individually be referred to as a “Party”.

**RECITALS**

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

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

**WHEREAS**, in response to the RFQ, Consultant submitted its sealed Qualifications for the provision of professional Traffic Engineering and Transportation Consulting Services (“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 passed and adopted Resolution No. 2010-88, approving the selection of Consultant for the provision of Services on a continuing-contractual basis; and

**WHEREAS**, the City is in need of Services to analyze the current circulation patterns of the greater downtown area and identify potential improvements to disperse vehicular traffic and achieve greater efficiencies in transit operations, with the aim of enhancing pedestrian, bicycle and transit oriented experiences, while accommodating approximately thirty-five thousand (35,000) vehicles traversing the corridor on a daily basis, as more particularly described in the Contract Documents; and

**WHEREAS**, on October 28, 2014, the Vice Mayor as acting Mayor and City Council passed and adopted Resolution No. R-2014-\_\_\_\_, authorizing the City Manager to execute this Agreement for the provision of Services, as beneficial to the health, safety and welfare of all City residents.

**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 Consultant's response to the RFQ ("Qualifications"), attached hereto by reference;

2.1.3 Resolution No. R-2010-88, passed and adopted by the Mayor and City Council on September 15, 2010, approving the selection of Consultant for the provision of Services;

2.1.4 Resolution No. R-2014-\_\_\_, passed and adopted by the Mayor and City Council on October 28, 2014, authorizing the execution of this Agreement;

2.1.5 Consultant's Draft Proposed Scope of Work and Estimated Budget for the Northeast 125<sup>th</sup> Street Corridor Multi-Modal Improvements dated September 30, 2014 ("Proposal"), attached hereto as Exhibit "A";

2.1.6 Any additional documents which are required to be submitted by Consultant 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.

2.2.4 The Proposal.

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

**ARTICLE 3 – TIME FOR PERFORMANCE**

3.1 Subject to authorized adjustments, the Time for Performance shall not exceed a period of twelve (12) months commencing on the date this Agreement is executed, unless terminated earlier by the City. Consultant 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 Consultant 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 Consultant. 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 Consultant's ability to perform Services or any portion thereof, the City may request that the Consultant, within a reasonable time frame set forth in the City's request, provide adequate assurances to the City in writing, of Consultant's ability to perform in accordance with terms of this Agreement. In the event that the Consultant 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.

3.4 Notwithstanding the provisions of this Article 3, this Agreement may be terminated by the City at any time, with or without cause.

#### **ARTICLE 4 - COMPENSATION**

4.1 Consultant shall be paid the estimated amount of One Hundred Twenty Thousand Dollars (\$120,000.00) as full compensation for Services, pursuant to Contract Documents. Compensation shall be obtained from the following sources: Miami-Dade Metropolitan Planning Organization Grant, with One Hundred Thousand Dollars (\$100,000.00); and the half-cent Transportation Surtax, with Twenty Thousand Dollars (\$20,000.00).

4.2 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 Consultant.

#### **ARTICLE 5 - SCOPE OF SERVICES**

5.1 Consultant agrees to perform Services for the benefit of the City under the special terms, schedules, and conditions set forth in the Contract Documents. Consultant 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 Consultant executed by the Parties after execution of this Agreement. The Consultant 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 Consultant represents and warrants to the City that: (i) Consultant possesses all qualifications, licenses and expertise required in the provision of Services, with personnel fully licensed by the State of Florida; (ii) Consultant 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 Consultant is duly authorized to execute same and fully bind Consultant as a Party to this Agreement.

5.4 Consultant agrees and understands that: (i) any and all subconsultants used by Consultant shall be paid by Consultant and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of subconsultants for any of the work related to this Agreement shall be borne solely by Consultant. Any work performed for Consultant by a subconsultant will be pursuant to an appropriate agreement between Consultant and subconsultant which specifically binds the subconsultant to all applicable terms and conditions of the Contract Documents.

5.5 Consultant warrants that any and all work, materials, services or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result, will be supplied by the Consultant at its own cost, whether or not specifically called for.

5.6 Consultant warrants and accepts that any and all work, materials, services or equipment necessitated by the inspections of City and/or Miami-Dade County agencies, or other regulatory agencies as are applicable, to bring the project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures, or considered inside the contemplation of the Contract Documents, shall be deemed the responsibility of the Consultant at no additional cost to the City.

#### **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 Consultant. In such event, the City shall pay Consultant compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Consultant for any additional compensation, or for any consequential or incidental damages.

#### **ARTICLE 7 - INDEPENDENT CONTRACTOR**

7.1 Consultant, 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 Consultant 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 Consultant fails to comply with any provision of this Agreement, the City may declare the Consultant in default by written notification. The City shall have the right to

terminate this Agreement if the Consultant fails to cure the default within ten (10) days after receiving notice of default from the City. If the Consultant fails to cure the default, the Consultant will only be compensated for completed Services. In the event partial payment has been made for such Services not completed, the Consultant shall return such sums due to the City within ten (10) days after notice that such sums are due. The Consultant understands and agrees that termination of this Agreement under this section shall not release Consultant from any obligations accruing prior to the effective date of termination.

#### **ARTICLE 9 - ENGINEER'S ERRORS AND OMISSIONS**

9.1 Consultant shall be responsible for technically deficient designs, reports, or studies due to Consultant's errors and omissions, and shall promptly correct or replace all such deficient design work without cost to City. The Consultant 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 Consultant 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 Consultant, 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 Consultant'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 Consultant 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 Consultant under this Agreement. Consultant shall not commence work under this Agreement until after Consultant 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. Consultant shall not permit any subconsultant to begin work until after similar minimum insurance to cover subconsultant 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, Consultant 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. Consultant 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 Consultant 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 Consultant under this Agreement shall be delivered to the City by the Consultant upon completion of the Services and shall become property of the City, without restriction or limitation of its use. The Consultant agrees that all documents generated hereto shall be subject to the applicable provisions of the Public Records Law, under Chapter 119, Florida Statutes.

12.2 The Consultant shall additionally comply with Section 119.0701, Florida Statutes, including without limitation, the following conditions: (1) keep and maintain public records that ordinarily and necessarily would be required by the City to perform this service; (2) provide the public with access to public records on the same terms and conditions as the City would at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed, except as authorized by law; (4) meet all requirements for retaining public records and transfer, at no cost to the City, all public records in its possession upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; and (5) all electronically stored public records must be provided to the City in a format compatible with the City's information technology systems.

12.3 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 Consultant pursuant to this Agreement shall at all times remain the property of the City and shall not be used by the Consultant for any other purposes whatsoever without the written consent of the City.

12.4 In the event the Agreement is terminated, Consultant agrees to provide the City all such documents within ten (10) days from the date the Agreement is terminated.

#### **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 Consultant: Kittelson & Associates, Inc.  
110 E. Broward Boulevard  
Suite 2410  
Fort Lauderdale, FL 33301  
Phone: (954) 828-1730

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

With copy to: City of North Miami  
Attn: City Attorney  
776 N.E.125<sup>th</sup> 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 - CONFLICT OF INTEREST**

14.1 Consultant 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.

14.2 Consultant 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 Consultant, except as fully disclosed and approved by the City. Consultant further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

**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 This Agreement and Contract Documents constitute 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.

15.5 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.

15.6 The City reserves the right to audit the records of the Consultant 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.

15.7 The Consultant 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.

15.8 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.

15.9 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.

15.10 The professional Services to be provided by Consultant 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 Consultant agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

15.13 All other terms, conditions and requirements contained in the RFQ, which have not been modified by this Agreement, shall remain in full force and effect.

15.14 In the event of any dispute arising under or related to this Agreement, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

15.15 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.

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

ATTEST: Kittelson & Associates, Inc., a foreign for-profit corporation:  
Corporate Secretary or Witness: **"Consultant"**

By: \_\_\_\_\_ By: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_ Date: \_\_\_\_\_

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

By: \_\_\_\_\_ By: \_\_\_\_\_  
Michael A. Etienne Aleem A. Ghany  
City Clerk City Manager

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
Regine M. Monestime  
City Attorney