

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF CUTLER BAY  
AND  
MAD 4 MARKETING, INC.**

**THIS AGREEMENT** (this "Agreement") is made effective as of the   11th   day of April, 2018 (the "Effective Date"), by and between the **TOWN OF CUTLER BAY, FLORIDA**, a Florida municipal corporation, whose principal address is 10720 Caribbean Boulevard, Suite 105, Cutler Bay, Florida 33189 (hereinafter the "Town"), and **MAD 4 MARKETING, INC.**, a Florida corporation whose address is 5255 NW 33 Avenue, Fort Lauderdale, Florida 33309 (hereinafter the "Consultant").

**WHEREAS**, the Consultant will provide professional public information outreach services to assist the Town with notifying its residents of the General Obligation Bond Referendum in the upcoming election ("Services"); and

**WHEREAS**, the Consultant and Town, through mutual negotiation, have agreed upon the fees for the Services; and

**WHEREAS**, the Town desires to engage the Consultant to perform the Services and provide the deliverables as specified below.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Consultant and the Town agree as follows:

1. **Scope of Services.**

- 1.1 Consultant shall provide the Services set forth in the proposal attached hereto as Exhibit "A" and incorporated herein by reference.
- 1.2 Consultant shall perform all necessary tasks and services, and furnish all reports, documents and information obtained pursuant to this Agreement, and recommendations during the term of this Agreement (hereinafter "Deliverables").

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon the Effective Date and shall remain in effect for three (3) months thereafter, unless earlier terminated in accordance with Paragraph 8.
- 2.2 Consultant agrees that time is of the essence and Consultant shall complete the Services within the term of this Agreement, unless extended, in writing, by the Town Manager.

3. **Compensation and Payment.**

- 3.1 Compensation for Services provided by Consultant shall be in accordance with the Detailed Costs attached hereto as Exhibit "B," in an amount not to exceed \$59,315.00.
- 3.2 Consultant shall receive payments as outlined in Exhibit "B" – Detailed Costs Per Tasks (\$59,315). One third of the total project costs (\$19,771) will be due upon execution of Agreement. The remaining balance will be paid in two (2) installments on May 8, 2018 (\$19,772) and on June 5, 2018 (\$19,772).

4. **Subconsultants.**

- 4.1 The Consultant shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to the Services.
- 4.2 Consultant may only utilize the services of a particular subconsultant with the prior written approval of the Town Manager, which approval shall be in Town Manager's sole and absolute discretion.

5. **Town's Responsibilities**

- 5.1 Town shall make available any staff and representatives, and provide criteria requested by Consultant to assist Consultant in providing the Services and Deliverables.
- 5.2 Upon Consultant's request, Town shall reasonably cooperate in arranging access to public information that may be required for Consultant to perform the Services.

6. **Consultant's Responsibilities**

- 6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily provided by a consultant under similar circumstances. If at any time during the term of this Agreement or within two (2) years from the completion of this Agreement, it is determined that the Consultant's Deliverables or Services are incorrect, not properly rendered, defective, or fail to conform to Town requests, the Consultant shall at Consultant's sole expense, immediately correct its Deliverables or Services.
- 6.2 The Consultant hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local

laws applicable to and necessary to perform the Services for Town as an independent contractor of the Town.

7. **Conflict of Interest.**

7.1 To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any current, or foreseeable, adversarial issues in the Town.

8. **Termination.**

8.1 The Town Manager, without cause, may terminate this Agreement upon five (5) calendar days' written notice to the Consultant, or immediately with cause.

8.2 Upon receipt of the Town's written notice of termination, Consultant shall immediately stop work on the project unless directed otherwise by the Town Manager.

8.3 In the event of termination by the Town, the Consultant shall be paid for all work accepted by the Town Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.

8.4 The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services and the project to the Town, in a hard copy and electronic format within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Insurance.**

9.1 Consultant shall secure and maintain throughout the duration of this Agreement, if selected, insurance of such types and in such amounts not less than those specified below as satisfactory to Town, naming the Town as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers naming the Town as additional insured. Any insurance maintained by the Town shall be in excess of the Consultant's insurance and shall not contribute to the Consultant's insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the Town as it deems necessary or prudent.

- a. Commercial General Liability coverage with limits of liability of not less than a \$500,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Consultant. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$1,000,000 each.
- b. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$500,000.00 each accident. No employee, subcontractor or agent of the Consultant shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.
- c. Business Automobile Liability with minimum limits of \$500,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.
- d. Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit.

9.2 **Certificate of Insurance.** Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Town and prior to commencing Services. Each certificate shall include no less than (30) thirty-day advance written notice to Town prior to cancellation, termination, or material alteration of said policies or insurance. The Consultant shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The

Town reserves the right to inspect and return a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town.

9.3 **Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Town is to be specifically included as an Additional Insured for the liability of the Town resulting from Services performed by or on behalf of the Consultant in performance of this Agreement. The Consultant's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to the Consultant's insurance. The Consultant's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

9.4 **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Town. The Consultant shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

9.5 The provisions of this section shall survive termination of this Agreement.

10. **Nondiscrimination.**

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

11. **Attorneys Fees and Waiver of Jury Trial.**

11.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

11.2 IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY,

IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES  
ITS RIGHT TO TRIAL BY JURY.

12. **Indemnification.**

12.1 Consultant shall indemnify and hold harmless the Town, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Consultant's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the Town for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Consultant's performance or non-performance of this Agreement.

12.2 The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.**

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

For the Town:           Rafael G. Casals  
                                  Town Manager  
                                  Town of Cutler Bay  
                                  10720 Caribbean Boulevard, Suite 105  
                                  Cutler Bay, FL 33189

With a copy to:        Chad Friedman, Esq.  
                                  Town Attorney  
                                  Weiss Serota Helfman Cole & Bierman, P.A.  
                                  2525 Ponce de Leon Blvd., Suite 700  
                                  Coral Gables, FL 33134

For the Consultant:    Mad 4 Marketing, Inc.  
                                  5255 NW 33<sup>rd</sup> Avenue  
                                  Fort Lauderdale, FL 33309  
                                  Attn: Christine Madsen, President

14. **Governing Law and Venue.**

14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

15. **Entire Agreement/Modification/Amendment.**

15.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

15.3 Consultant represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Consultant have been duly authorized, and this Agreement is binding on Consultant and enforceable against Consultant in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

16. **Ownership and Access to Records and Audits.**

16.1 Consultant acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the Town which are conceived, developed or made by Consultant during the term of this Agreement ("Work Product") belong to the Town. Consultant shall promptly disclose such Work Product to the Town and perform all actions reasonably requested by the Town (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

16.2 Consultant agrees to keep and maintain public records in Consultant's possession or control in connection with Consultant's performance under this Agreement. Consultant additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Consultant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.

- 16.3 Upon request from the Town's custodian of public records, Consultant shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 16.4 Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.
- 16.5 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Consultant shall be delivered by the Consultant to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Consultant shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Consultant shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 16.6 Any compensation due to Consultant shall be withheld until all records are received as provided herein.
- 16.7 Consultant's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

**Section 119.0701(2)(a), Florida Statutes**

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS:**

**Custodian of Records: Debra E. Eastman, MMC**  
**Mailing address: 10720 Caribbean Boulevard**  
**Suite 105**  
**Cutler Bay, FL 33189**  
**Telephone number: 305-234-4262**

**Email:** [Deastman@cutlerbay-fl.gov](mailto:Deastman@cutlerbay-fl.gov)

17. **Nonassignability.**

17.1 This Agreement shall not be assignable by Consultant unless such assignment is first approved by the Town Manager. The Town is relying upon the apparent qualifications and expertise of the Consultant, and such firm's familiarity with the Town's area, circumstances and desires.

18. **Severability.**

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

19. **Independent Contractor.**

19.1 The Consultant and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Town with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. **Compliance with Laws.**

20.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.

21. **Waiver**

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

22. **Survival of Provisions**

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

23. **Prohibition of Contingency Fees.**

23.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. **Public Entity Crimes Affidavit**

24.1 Consultant shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

25. **Counterparts**

25.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

26. **Background Checks**

26.1 The Consultant will be responsible for maintaining current background checks on all employees and subcontractor employees involved in the performance of the Services. Background checks must be performed prior to the performance of any Work by the employee under this Agreement. Written verification of any background checks must be provided to the Town at the request of the Town Manager.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written below their signatures.

**FOR THE CONSULTANT:**

**MAD 4 MARKETING, INC.**, a Florida Corporation



By: \_\_\_\_\_

Name: Christine Madsen \_\_\_\_\_

Title: President \_\_\_\_\_

Date Executed: 4/11/2018

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

**FOR THE TOWN:**

**TOWN OF CUTLER BAY, a  
Florida municipal corporation**

By: Rafael Casals  
Rafael G. Casals, Town Manager

Date Executed: 4/11/18

Attest:

By: Debra E. Eastman  
Debra E. Eastman, Town Clerk, CMC

Approved as to Form and Legal Sufficiency:

By: \_\_\_\_\_  
Town Attorney  
Weiss Serota Helfman Cole & Bierman, P.L.

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

Scope of Services are those contained in Attachment "A" of the Manager's Memo for Resolution 2018-\_\_\_\_\_, attached hereto and incorporated herein by reference.

**EXHIBIT B**  
**Detailed Costs**

<b>Town of Cutler Bay G.O. Bond Initiatives</b>		
Itemized Quote Prepared by Mad 4 Marketing		
<b>Project</b>	<b>Initiative</b>	<b>Price</b>
<b>Marketing Consulting</b>		<b>\$4,300</b>
	Consulting	
	Meetings/calls	
<b>PR</b>		<b>\$5,000</b>
	Press Releases/Media	
<b>Social Media</b>		<b>\$4,500</b>
	Facebook and Instagram campaign	
<b>Creative &amp; Website</b>		<b>\$4,575</b>
	Content & Messaging	
	Print Collateral	
	Landing Page	
<b>Grassroots Outreach Consulting</b>		<b>\$1,875</b>
	Acquiring Voter Data	
<b>Canvassers (10)</b>		<b>\$16,250</b>
	3 days/week for 3 wks (24 hours/wk)	
<b>Printing</b>		<b>\$13,965</b>
15000	Flyers	
150	Posters	
250	Yard signs	
10	Banners	
26521 (x2)	Mailers	
<b>Translation</b>		<b>\$575</b>
<b>Direct Mail</b>		<b>\$1,375</b>
(x2)	Fulfillment	
<b>Postage</b>		<b>\$6,900</b>
	<b>Total Price</b>	<b>\$59,315</b>