



REQUEST FOR QUALIFICATIONS
RFQ # 15-12
Cutler Bay Town Center
HVAC Equipment & Controls
(Design, Bidding, and Construction Management Services)

SECTION # 1

INTRODUCTION

The Town of Cutler Bay (the “Town”), a municipality located in Miami-Dade County, Florida, pursuant to the “Consultants’ Competitive Negotiation Act” (CCNA), Section 287.055, Florida Statutes, which governs the acquisition of professional engineering, landscape, architectural, and surveying and mapping services, and as may be amended, hereby requests qualifications for the selection of a firm (the “Consultant”) to provide professional services (the “Services”) to the Town for HVAC Equipment and Controls (Design, Bidding, and Construction Management Services) improvements associated with the Town Center Building located at 10720 Caribbean Boulevard, Cutler Bay, Florida 33189. Florida law requires the Town to make a determination of a respondent’s qualifications to perform architecture, professional engineering, and other professional services prior to engagement. The information used in this RFQ will be used by the Town to make this determination.

The Town intends to execute a Professional Services Agreement with a selected Consultant to provide such services.

EXISTING INFRASTRUCTURE

Heating, Ventilation and Air Conditioning (HVAC) for the building is provided by a custom built Trane air handling system with four (4) separate condensing coils served by an individual air cooled condensers mounted on metal stands on the roof. One axial fan supplies medium pressure air to approximately 135 individual pneumatically controlled Variable Air Volume (VAV) terminals. These VAV terminals are individually controlled by the Novar automated control system. The two (2) Carrier 38 AH-084 condensing units (Serial # 3801F12706 and Serial # 3801F12745) each provide 80 tons of cooling using R22 refrigerant. Pre-filters were installed over the filter banks to reduce filter replacement costs. Vertical transportation is provided by two (2) 2,500 pound capacity, six-stop elevators. The lift equipment and control panels are located within the mechanical room on roof of the building.



1.1 SCHEDULE OF EVENTS

No.	Event	Date*	Time* (EST)
1	Advertisement/ Distribution of RFQ & Cone of silence begins	TBA	9:00 AM
2	Mandatory Pre-RFQ-Response Meeting 10720 Caribbean Blvd., Suite 105 Cutler Bay, Florida 33189	TBA	3:00 PM
3	Deadline to Submit Questions	TBA	1:00 PM
4	Deadline to Town Responses to Questions	TBA	5:00 PM
5	Deadline to Submit RFQ-Response	TBA	2:00 PM
6	Announcement of selected Respondents/Cone of Silence Ends	TBA	2:00 PM

*The Town reserves the right to change the scheduled dates and time.

1.2 ELIGIBILITY

In addition to other requirements stated in this document, to be eligible to respond to this RFQ, the respondent must have successfully provided, within the past five (5) years, services similar to those described in Section 2.2 of this RFQ. The respondent must meet all legal, technical and professional requirements for providing the requested services.

Respondents shall furnish such additional information as the Town may reasonably require. This includes information that indicates financial resources as well as ability to provide and maintain the required services described herein. The Town reserves the right to make investigations of the respondents' qualifications or those of any of its agents, as it deems appropriate.

1.3 ADDENDA

If the Town finds it necessary to add to, or amend this RFQ prior to the response submittal deadline, the Town will issue written addenda/addendum. Each respondent must acknowledge receipt of each addendum by signing the acknowledgement thereof (Appendix A) and providing it with its response.



1.4 CERTIFICATION

Each respondent to this RFQ must declare, by signing Appendices A and B, that the person(s), firm(s) and parties identified in the response are interested in and available to provide the services required; that the response is made without collusion with any other person(s), firm(s) and parties; that the response is fair in all respects and is made in good faith without fraud; and that the person signing any part of the response and cover letter has full authority to bind the person(s), firm(s) and parties identified in the response.

1.5 PUBLIC RECORDS

Florida law provides that municipal records should be open for inspection by any person under Section 119, F.S. Public Records law. All information and materials received by the Town in connection with responses shall become property of the Town and shall be deemed to be public records subject to public inspection.

1.6 RETENTION OF RESPONSES

The Town reserves the right to retain all responses submitted and to use any ideas contained in any response, regardless of whether that respondent or any respondent is selected.

1.7 QUESTIONS AND CLARIFICATIONS:

All requests for information and/or clarification should be submitted in writing on or before **TBA (1:00 p.m.)**, as described in Section 1.1 - Schedule of Events:

Town Clerk
Attn: Cutler Bay Town Center – HVAC Equipment and Controls
(Design, Bidding, and Construction Management Services)
RFQ #15-12
Town of Cutler Bay
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189
Phone: (305) 234-4262 / Fax: (305) 234-4251
Email: townclerk@cutlerbay-fl.gov

1.8 TOWN AUTHORITY

Proposals will be selected at the sole discretion of the Town. The Town reserves the right to waive any irregularities in the request process, to reject any or all proposals, reject a proposal which is in any way incomplete or irregular, re-bid the entire solicitation or enter into agreements with more than one respondent. Proposals received after the deadline will not be considered.



1.9 CAMPAIGN FINANCE RESTRICTIONS ON VENDORS

Pursuant to the Town Code and the Town Charter, vendors of the Town are required to disclose any campaign contributions to the Town Clerk, and each vendor must do so prior to and as a condition of the award of any Town contract to the vendor.

Vendors' Campaign Contribution Disclosure:

1. General requirements:

- (A) Any vendor required to disclose campaign contributions pursuant to the Charter of the Town of Cutler Bay, as may be amended, shall file a written disclosure with the Town Clerk, stating all contributions made that were accepted by an elected official of the Town, the official to whom they were made and the date they were made. The Town Clerk may develop a form to be used by vendors for such disclosure.
- (B) The disclosure shall be filed prior to and as a condition of the award of any Town contract to the vendor.
- (C) The Town Clerk shall inform the Council of any disclosures which were made in relation to any items before the Council prior to the hearing on the item or prior to the award of the contract.
- (D) If an existing vendor makes a contribution, the vendor must report the contribution to the clerk within the earlier of: ten days of acceptance or prior to the award of the contract or renewal.
- (E) The Town Clerk shall file a quarterly report listing the vendor disclosures in the quarter.

2. Disqualification:

- (A) If a vendor of products or services, directly or through a member of the person's immediate family, through a political action committee or through any other person, makes a campaign contribution to a Town candidate and fails to disclose it, the vendor shall be barred from selling any product or service to the Town for a period of two years following swearing in of the subject elected official.

1.10 CONE OF SILENCE

Notwithstanding any other provision in this solicitation, the provisions of Town "Cone of Silence" are applicable. The entirety of these provisions can be found in Town Ordinance 06-22. The "Cone of Silence," as used herein, means a prohibition on any communication regarding a particular Request for Proposal ("RFP"), Request for Qualification ("particular RFQ") or bid, between:



A potential vendor, service provider, proposer, bidder, lobbyist, or consultant; and the Town Council, Town's professional staff including, but not limited to, the Town Manager and his or her staff, any member of the Town's selection or evaluation committee.

The Cone of Silence shall be imposed upon each particular RFQ, RFP and bid after the advertisement of said particular RFQ, RFP, or bid. The Cone of Silence shall terminate at the beginning of the Town Council meeting when the Town Manager makes his written recommendation to the Town Council. However, if the Town Council refers the Manager's recommendation back to the Manager or staff for further review, the Cone of Silence shall be re-imposed until such time as the Manager makes a subsequent written recommendation.

The Cone of Silence shall not apply to:

- (1) oral communications at pre-bid conferences;
- (2) oral presentations before selection or evaluation committees;
- (3) public presentations made to the Town Council during any duly noticed public meeting;
- (4) communication in writing at any time with any Town employee, unless specifically prohibited by the applicable particular RFQ, RFP or bid documents. The bidder or proposer shall file a copy of any written communication with the Town Clerk. The Town Clerk shall make copies available to any person upon request;
- (5) communications regarding a particular RFQ, RFP or bid between a potential vendor, service provider, proposer, bidder, lobbyist or consultant and the Town's Purchasing Agent or Town employee designated responsible for administering the procurement process for such particular RFQ, RFP or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;
- (6) communications with the Town Attorney and his or her staff;
- (7) duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the Town Manager makes his or her written recommendation;
- (8) any emergency procurement of goods or services pursuant to Town Code;



- (9) responses to the Town's request for clarification or additional information;
- (10) contract negotiations during any duly noticed public meeting;
- (11) communications to enable Town staff to seek and obtain industry comment or perform market research, provided all communications related thereto between a potential vendor, service provider, proposer, bidder, lobbyist, or consultant and any member of the Town's professional staff including, but not limited to, the Town Manager and his or her staff are in writing or are made at a duly noticed public meeting.

Please contact the Town Attorney for any questions concerning Cone of Silence compliance. Violation of the Cone of Silence by a particular bidder or proposer shall render any particular RFQ award, RFP award or bid award to said bidder or proposer voidable by the Town Council and/or Town Manager.

1.11 LOBBYIST REGISTRATION

Proposers must also comply with all Town Charter sections and Code sections, including without limitation, those pertaining to lobbyists, including Section 7.6 of the Town Charter and implementing ordinance(s), including Sec. 2-11(s) of the Town Code and Ordinance 07-02. Please contact the Town Clerk at (305) 234-4262 for additional information.

1.12 PRESENTATION COSTS

The Town shall not be liable for any costs, fees, or expenses incurred by any Consultant in responding to this RFQ, subsequent inquiries or presentations relating to its expense.

SECTION # 2 **SERVICES NEEDED BY THE TOWN**

2.1 GENERAL BACKGROUND

The Town of Cutler Bay purchased “Cutler Bay Town Center” Building located at 10720 Caribbean Boulevard. The building was built in 1986 and is six (6) stories with a mechanical penthouse at the roof level. The total square footage is approximately 78,198 s.f. The Town administrative offices occupy the entire first floor and portions of the second floor. The second floor through the penthouse is occupied by several private tenants. The typical office floor plate is approximately 12,565 s.f.



Pursuant to Chapter 287.055, Florida Statutes, the Town intends to retain consultants to provide professional services as described herein. In order to fulfill the needs of quick response and professional expertise, the Town intends to retain one (1) Consultant.

The Town reserves the right to award contracts to Consultants who will best serve the interests of the Town and whose responses are considered by the Town to be the most responsive and most responsible.

The Town reserves the right to accept or reject any or all responses, based upon its deliberations and opinions. In making such determination, the Town reserves the right to investigate the financial capability, integrity, experience and quality of performance of each respondent, including officers, principals, senior management and supervisors as well as the staff identified in the response.

THE TOWN ALSO RESERVES THE RIGHT TO WAIVE MINOR VARIATIONS OR IRREGULARITIES IN THE RESPONSES.

2.2 SCOPE OF SERVICES

The Consultants can expect to provide services encompassed by various disciplines, including, but not limited to the tasks identified below:

2.2.1 Design Phase:

- Meet with the Town staff to discuss and review desired results of proposed renovation work.
- Review existing as-built documents as they relate to existing HVAC system.
- Study the existing main HVAC (AHU & CUs) equipment operation as per existing design by reviewing record documents provided by the Town.
- Study the existing Smoke Control equipment operation as per existing design by reviewing record documents. Meet with the Town staff and fire department personnel to discuss issues related to the existing system.
- Coordinate pre-design Test and Balance to confirm existing operation prior to new design.
- Produce new design for replacement AHU/CUs and existing VAV box controls.
- All other building air distribution (VAV, Diffusers, Air Balance, Toilet Exhaust) to remain unchanged.
- Generate technical report to properly define needs for work desired by the Town.
- Coordinate, review and modify Town Bidding documents.

2.2.2 Bidding Phase:

- Assist Town staff in Pre-Bid Walk-through and mandatory Pre-RFQ meeting.
- Assist Town staff in the review submittals, comments/recommendations.



2.2.3 Construction Management Phase:

- Shop drawing review
- Assist Town staff in responding to contractor's RFI's during construction period.
- Perform six (6) site visits for observation of the work and to report on work progress.
- Test and Balance Report review

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SECTION # 3

RESPONSE SUBMISSION REQUIREMENTS AND EVALUATION

Six (6) signed (one (1) original and five (5) bound copies) responses shall be submitted in one (1) sealed package, clearly marked on the outside "RFQ #15-12, CUTLER BAY TOWN CENTER – HVAC EQUIPMENT AND CONTROLS (DESIGN, BIDDING AND CONSTRUCTION MANAGEMENT SERVICES). The outside of the sealed envelope shall also show the name of the respondent.

All responses must be received at the receptionist's desk in the Town Hall located at 10720 Caribbean Blvd., Suite 105, Cutler Bay, FL 33189, by **2:00 P.M., TBA**, at which time their receipt will be publicly documented by the Town Clerk or her designee(s).

NOTE: A "Mandatory" Pre-RFQ Response Meeting will be held on **TBA at 3:00 PM.** Location: Town Hall Council Chambers 10720 Caribbean Boulevard, Suite 115, Cutler Bay, Florida 33189.

All responses must be received by the Town Clerk by the due date and time. All responses received after the due date and time will not be considered.

3.1 RESPONSE / (QUALIFICATION PACKAGE) PREPARATION

Each respondent shall submit one original and five bound copies of each response. Each response shall be limited to twenty (20) pages (paper size 8.5"x11,"printed on only one side of the paper, single or the larger spacing, font size not less than 11) excluding the certificates, and Appendices A, B and C. The sections shall follow the order given on the next page. The twenty (20) page limit is for items 1 through 9 below. No material other than that listed in this section shall be included in the response.

1. A **one-page** cover letter indicating the respondent's interest in providing the services to the Town and a statement on why the respondent should be selected for the award. The letter shall include the name of the respondent and those of the sub-consultants, explanation of the type of contractual agreement between them, if different from that of prime and sub-consultant. A representative who is authorized to contractually bind the respondent shall sign this letter.
2. A **one-page** table of contents identifying the sections and page numbers.
3. A **one-page** proposed organization chart identifying key professionals, their area(s) of responsibility and extent of their availability.
4. A **two-page** history of all the employees who are with the firm that is providing the response.
5. **Up to four one-page** resumes of the persons, including the proposed project manager, which will be assigned to the team for the Town's project.



6. **Up to two, one-page**, tables showing all current and recently completed private and public (local municipal, county, regional and state) sector projects performed by the members of the team to be used on this project. The table shall include for each project: (a) the length of the contract; (b) the scope of services provided; (c) the type of contract (pro bono, retainer, project based fee, other); (d) specific accomplishments, if any; and (e) a contact name, phone number and e-mail address for each project. If the respondent team includes sub-consultants, there must be at least one project listed for each sub-consultant. The respondent may select suitable projects, if the list exceeds two-page limit.
7. **Up to two one-page**, narratives on specific projects completed on time and in budget within the past five (5) years.
8. **Up to four one-page** descriptions of projects providing services similar to those identified in the scope of services over the last five (5) years. The emphasis shall be given to the projects in Florida AND the tasks performed by the persons identified in above in No. 5.
9. **Up to three one-page** copies of any press articles, profiles, commendations, awards and honors. The emphasis shall be given to the projects completed in Florida AND the projects of the persons identified in No. 5 above.
10. **Six (6) Pages** completed Appendices A, B, and C (one in each submittal) and all proofs of authorization to transact business in the State from the Florida Secretary of State, for the respondent as well as supporting firms.

Note: Appendix pages will NOT be counted towards the twenty (20) page submittal limit

3.2 RESPONSE EVALUATION CRITERIA

The selection committee will evaluate the responses based on the criteria and point value listed below.

1. Quality of the projects and accomplishments of the respondent(s) in providing similar Design, Bidding and Construction Management Services to comparable Multi-Story Buildings
(30 Points)
2. Respondent's track record of on time and within budget project performance
(20 Points)
3. Credentials and accomplishments of the proposed team (up to 3) members
(20 Points)



4. Respondent's experience in designing LEED and/or Green Globe Certified Projects
(20 Points)
5. Respondent must be able to demonstrate that it has been Certified as a Minority Business Enterprise as defined by Section 288.703, F.S. For purposes of this section, the actual consultant submitting a response must be the entity that is certified
(5 Points)
6. Compliance with the response preparation and submission requirements
(5 Points)

3.3 SHORT-LIST FOR ORAL PRESENTATIONS AND FINAL SELECTION

A selection committee will review all submittals and develop a short-list on the basis of the responses and will be called for oral presentations. It is anticipated that at least three respondents will be short-listed. All respondents and their teams shall be present at the assigned time for a twenty (20) minute presentation followed by up to a ten (10)-minute questions-and-answer session. The respondents are encouraged to be represented only by the Project Manager and the staff identified in the response. Additional details on the oral presentations may be provided to the short-listed respondents. The oral presentation will be worth Twenty-Five Percent (25%) in the final ranking and the response will be worth Seventy-Five Percent (75%).

3.4 PROCESS OF SELECTION AND NEGOTIATION

The Town reserves the right to make multiple awards pursuant to this solicitation. After short-listing of respondents deemed qualified by the selection committee, oral presentations and re-ranking of the qualified respondents, it is anticipated the Council will authorize negotiations of continuing service agreements with one or more respondents. After successful negotiation of the continuing service agreements, the proposed agreement(s) shall be presented to the Town Council with a recommendation for award and execution. If contract negotiations fail with any Proposer, the Town may undertake negotiations with alternative respondents. The Town and Consultant(s) shall subsequently negotiate specific project terms in accord with Florida Statute 287.055 after the short-list selection and continuing services agreements are completed. Any award shall be subject to execution of an agreement in form and substance approved by the Town Attorney.

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SECTION # 4 **OTHER CONDITIONS**

4.1 TERM OF ENGAGEMENT

The continuing service agreement term will be for two (2) years, with the option for the Town to extend the agreement for an additional one (1) year term. The Town may terminate the agreement with a thirty (30) day notice, without providing cause.

4.2 PERMITS, TAXES, LICENSES

The Consultant shall, at its own expense, obtain all necessary permits, pay all licenses, fees and taxes required to comply with all local ordinances, State and Federal laws, rules, regulations and professional standards that apply to the agreement.

4.3 LAWS, ORDINANCES

The Consultant shall observe and comply with all Federal, State and local laws, ordinances, rules, regulations and professional standards that apply to the agreement.

4.4 INSURANCE

Prior to execution of an agreement with the Town, the Consultant shall provide certificates evidencing insurance coverage as required hereunder from companies authorized to do business under the laws of the State of Florida. The certificates shall clearly indicate that the Consultant has obtained insurance of the type, amount, and classification as required and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the Town. Compliance with these requirements will not relieve the Consultant of its liability and obligations under the agreement.

The Consultant shall maintain during the term of the agreement, standard Professional Liability insurance in the minimum amount of one-million-dollars (\$1,000,000) per occurrence.

The Consultant shall maintain during the life of the agreement, commercial general liability, including contractual liability insurance in the amount of one-million-dollars (\$1,000,000) per occurrence to protect it and the Town from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under the agreement, whether such operations be by the Consultant or by anyone directly employed by or contracting with the Consultant.



The Consultant shall maintain, during the life of the agreement, comprehensive automobile liability insurance in the minimum amount of five-hundred-thousand-dollars (\$500,000) combined single limit for bodily injury and property damage liability to protect it from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Consultant or by anyone directly or indirectly employed by the Consultant.

The Consultant shall maintain, during the life of the agreement, Worker's Compensation Insurance and Employer's Liability insurance as required by law and in at least such amounts for all of its employees as set out in Florida Statute 440.02.

The Consultant shall also maintain other required insurance coverage specific to the services to be provided as may be required by the Town.

4.5 NEGOTIATIONS

Fees negotiated will be for the underlying contract/services and will be negotiated in accordance with Florida Statutes.

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RFQ #15-12
HVAC EQUIPMENT AND CONTROLS
DESIGN, BIDDING, AND CONSTRUCTION MANAGEMENT SERVICES

NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2015 between the Town of Cutler Bay, hereinafter referred to as “the Town,” and, hereinafter referred to as the “Consultant”.

RECITALS:

Whereas, this shall constitute a professional services contract pursuant to Section 287.055, F.S.

Now therefore, in consideration of the promises and the mutual covenants herein contained, the parties agree as follows:

1. The specific nature of the services to be provided by Consultant are outlined in the body of this Professional Services Agreement (the “Agreement”), and incorporated herein, and are further outlined in the text of Town's Request for Qualifications (“RFQ”) #15-12, attached as Exhibit “A” and incorporated herein.
2. For services performed in accordance with the provisions of paragraph 1 above and Section II below, the Town shall pay Consultant in accordance with the terms and conditions more fully set out in Sections V and VI.

SECTION I — TOWN OBLIGATIONS

The Town agrees that the Town Manager or his authorized designee shall furnish to the Consultant any plans and other data readily available in the Town files pertaining to the work to be performed under this Agreement. Information shown on such plans or data shall be that which has been made available to the Town, and shall be provided to the Consultant. Such information is furnished by the Town without guarantee regarding its reliability and accuracy. The Consultant shall be responsible for independently verifying such information if it shall be used by the Consultant to accomplish the work undertaken pursuant to this Agreement. The Consultant may be compensated for any necessary verification work requested by Town, subject to the express written authorization of the Town.

The Town reserves the right to certify the accuracy of information provided by the Town to the Consultant. When such certification is provided in writing, the Consultant shall not be compensated for independent verification of said information.



SECTION II — PROFESSIONAL SERVICES

- (a) Consultant shall perform professional services for the benefit of the Town in connection with and as envisioned in the Town’s RFQ #15-12 HVAC Equipment and Controls (Design, Bidding, and Construction Management Services) “Professional Services”. The consultant shall be issued a Purchase Order by the Town for professional services associated with RFQ #15-12, covering in detail the scope, time for completion and compensation for the work to be accomplished. In case of emergency, the Town reserves the right to issue oral authorization to the Consultant with the understanding that written confirmation shall follow immediately thereafter. The Consultant shall submit a proposal upon the Project Manager’s request prior to the issuance of a Notice to Proceed. No payment shall be made for the Consultant’s time or services in connection with the preparation of any such proposal. The Town shall confer with the Consultant before any Notice to Proceed is issued to discuss and agree upon the scope, time for completion, and fee for services to be rendered pursuant to this Agreement.
- (b) In connection with professional services to be rendered pursuant to this Agreement, the Consultant further agrees to:
1. Maintain an adequate staff of qualified personnel on the work at all times to ensure its completion within the term specified in the applicable Notice to Proceed.
 2. Comply with any Federal, State and local government laws, ordinances, processes, standards, rules, orders, etc. applicable to the work stated in the Town’s RFQ #15-12. Where a term of this agreement conflicts with an applicable County rule made applicable to this Agreement through RFQ #15-12, the terms of that County rule shall prevail.
 3. Cooperate fully with the Town in the scheduling and coordination of all tasks and phases of the work.
 4. Prepare necessary documents, as required or requested, for all applicable agencies including regulatory requirements and permits.
 5. Report the status of the work to the Town upon request and hold pertinent data, calculations, field notes, records, sketches, procedures, proposals, records, and other work products open to inspection of the Town.
 6. Submit for Town review computations, reports, and other data representative of the work’s progress at the percentage stages of completion which may be stipulated in the applicable Notice to Proceed. Submit for Town approval the final work products upon incorporation of any modifications requested by the Town during any previous review.



7. Be available at all reasonable times for general consultation and advice through the effective term of this Agreement.
8. Confer with the Town at any time during the further development and implementation of improvements for which the Consultant has provided professional services as to interpretation of plans and other documents, correction of errors and omissions and preparation of any necessary plan thereof. The Consultant shall not be compensated for the correction of errors and omissions to the extent that those errors and omissions are the responsibility of the Consultant.
9. Perform all services in a competent and skilled manner.

SECTION III — SCHEDULE OF WORK AND TIME FOR COMPLETION

- (a) The Town shall have the sole right to determine assignment of work and on which units or sections of the work the Consultant shall proceed and in what order. Written Purchase Orders issued by the Town shall cover in detail the scope, time for completion and intent of requested services and shall serve to authorize the assignment of work referenced in paragraph 1 of the Recitals to this Agreement.
- (b) The services to be rendered by the Consultant for each section of the work or upon the assignment, shall commence upon receipt of a written executed Purchase Order and/or a notice to proceed (the "NTP") from the Town subsequent to the execution of the Agreement, and shall be completed within the time stated in the Purchase Order or the NTP.
- (c) A reasonable extension of time shall be granted in the event there is a delay on the part of the Town in fulfilling its part of the Agreement or should a Force Majeure, as defined in Section IV hereof, render performance of the Consultant's duties impossible. Such extension of time shall not be cause for any claim by the Consultant for extra compensation.

SECTION IV — FORCE MAJEURE

- (a) Force Majeure shall mean an act of God, epidemic, lightning, earthquake, fire, explosion, hurricane, flood or similar occurrence, strike, an act of public enemy, or blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, which has had or may reasonably be expected to have a material adverse effect on the rights and obligations under this Agreement, and which, by the exercise of due diligence, such parties shall not have been able to avoid. Such acts or events DO NOT INCLUDE inclement weather (except as noted above) or the acts or omissions of subconsultants/subcontractors, third-party consultants/contractors, material men, suppliers, or their subcontractors, unless such acts or omissions are otherwise encompassed by the definition set forth above.



- (b) No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations, but the obligation of the party or parties relying on such Force Majeure shall be suspended only during the continuance of any inability so caused and for no longer period of said unexpected or uncontrollable event, and such cause shall, so far as possible, be remedied with all reasonable dispatch.
- (c) It is further agreed and stipulated that the right of any party hereto to excuse its failure to perform by reason of Force Majeure shall be conditioned upon such party giving, to the other party or parties, written notice of its assertion that a Force Majeure delay has commenced within ten (10) working days after such commencement, unless there exists good cause for failure to give such notice, in which event failure to give such notice shall not prejudice any party's right to justify any non-performance as caused by Force Majeure unless the failure to give timely notice causes material prejudice to the other party or parties.

SECTION V — COMPENSATION

- (a) The Town agrees to pay and the Consultant agrees to accept, for satisfactory performance, as determined solely by the Town of services rendered pursuant to this Agreement, including work as stipulated by Section II – Professional Services, and all preliminary and/or incidental work thereto, fees computed in accordance with the schedule of rates, a copy of which is attached hereto, or as otherwise set forth in the Purchase Order for the specific work.
- (b) Reimbursement for the reasonable and necessary expenses of the Consultant for postage, copying, long distance telephone calls, document reproduction, and authorized travel may be provided in accordance with the Purchase Order.

SECTION VI — PAYMENTS

Unless negotiated and otherwise agreed to, the Town shall make monthly fee payments to the Consultant, computed in accordance with Section V, for all work performed during the previous calendar month for work which has been assigned by Town to Consultant. The Consultant shall submit duly certified monthly invoices to the Town in the amount due for services performed to date and including any previously authorized reimbursable expenses incurred during the month. For lump sum assignments, invoices shall be based upon the percentage of work completed at invoice date. Invoices shall be processed pursuant to Section 218.70, Florida Statutes.



SECTION VII — SUBCONTRACTING

The Consultant shall not subcontract, assign or transfer any work under this Agreement without the prior written consent of the Town.

When applicable and upon receipt of such consent in writing, the Consultant shall cause the names of the firms responsible for the major portions of each separate specialty of the work to be inserted in the pertinent documents or data. All agreements with sub-consultants or sub-contractors (“Sub-Contractor”) shall state that such agreements shall be subject to all terms and conditions of this Agreement, along with all applicable laws and regulations and that the Sub-Contractor shall hold the Town harmless against all claims of whatever nature arising out of the Sub-Contractor’s performance of work under this Agreement, to the extent allowed and required by law. Consultant shall include in all reports due under this Agreement, all Subcontractors’ progress in performing its work under this hereunder.

SECTION VIII — EXTRA WORK

In the event extra work and/or expenses are necessary due to changes requested after the applicable portion of the work is approved by the Town, such extra work shall be the subject of an additional Purchase Order or a modification of the original Purchase Order.

SECTION IX — APPROVAL

The Town agrees, within thirty (30) days after delivery, to approve, reject, or return with indicated suggested revisions or recommendations, all schedules, submittals or other written communications submitted by the Consultant to the Town for approval. Such approval, revisions, or recommendations by the Town shall not relieve the Consultant of responsibility for the completeness or correctness of the work.

SECTION X — RIGHT OF DECISIONS

(a) All services shall be performed by the Consultant to the satisfaction of the Town's Project Manager who shall decide all questions, difficulties, and disputes of whatever nature, which may arise under or by reason of this Agreement. The monitoring of the prosecution and fulfillment by the Consultant of the services hereunder, and the character, quality, amount and value thereof, are within the Project Manager’s authority. The Project Manager’s decision upon all claims, questions, and disputes shall be final, conclusive, and binding upon the parties hereto unless such determination is arbitrary or unreasonable.



(b) Adjustments of compensation and time for completion of services hereunder because of any major changes in the work that might become necessary or be deemed desirable, as the work progresses shall be left to the absolute discretion of the Project Manager. In the event that the Consultant does not concur with the decisions of the Project Manager, the Consultant shall present any such objections in writing to the Town Manager. The Project Manager and the Consultant shall abide by the decisions of the Town Manager unless arbitrary or unreasonable. This paragraph does not constitute a waiver of either party's right to proceed in a court of competent jurisdiction, subject to the standards set forth above.

SECTION XI — OWNERSHIP OF DOCUMENTS

All reports, tracings, plans, specifications, maps, contract documents, designs, and/or other data (the "Documents") developed by the Consultant pursuant to this Agreement shall become the property of the Town without restrictions or limitations upon their use and shall be made available by the Consultant at any time upon request by the Town. Reuse of such Documents by the Town for any purpose other than that for which prepared shall be at the Town's sole risk. When each individual section or assignment of work requested pursuant to this Agreement is complete, all of the above Documents shall be delivered to the Town. The level of information required to be provided at the completion of an assigned task shall be specified within the Purchase Order authorizing the work.

SECTION XII — REUSE OF DOCUMENTS

The Consultant may reuse data from other sections of the work included in this Agreement provided irrelevant material is deleted. The Town shall not accept any reused data containing an excess of irrelevant material which has no substantial connection with the applicable portion of the work.

SECTION XIII — NOTICES

Any notices, reports or other written communications from the Consultant to the Town shall be considered delivered when posted by certified mail or delivered in person to the Project Manager. Any notices, reports or other communications from the Town to the Consultant shall be considered delivered when posted by certified mail to the Consultant at the last address left on file with the Town or delivered in person to said Consultant or the Consultant's authorized representative.

SECTION XIV — PUBLIC RECORDS LAW

Contractor acknowledges that the public shall have access, at all reasonable times, to certain documents and information pertaining to Town contracts, pursuant to the provisions of Chapter 119, Florida Statutes. Contractor agrees to maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement and to provide the public with access to public records in accordance with the record



maintenance, production and cost requirements set forth in Chapter 119, Florida Statutes, or as otherwise required by law. Contractor shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law.

Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of Town.

In the event of termination of this Agreement by either party, any reports, photographs, surveys and other data and documents and public records prepared by, or in the possession or control of, Contractor, whether finished or unfinished, shall become the property of Town and shall be delivered by Contractor to the Town Manager, at no cost to the Town, within seven (7) days of termination of this Agreement. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Upon termination of this Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure. Any compensation due to Contractor shall be withheld until all documents are received as provided herein. Contractor'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 XV — PROHIBITION AGAINST CONTINGENT FEES

The Consultant warrants that no companies or persons, other than bona fide employees working solely for the Consultant have been retained or employed to solicit or secure this Agreement or have been paid or guaranteed payment of any fees, commissions, percentage fees, gifts or any other considerations contingent upon or resulting from the award or making of this Agreement. The Consultant also warrants that no Town personnel, whether full-time or part-time employees, or officers, has or shall be retained or employed in any capacity, by the Consultant or the Town authorized subconsultants, to accomplish the work contemplated under the terms of this Agreement. For breach or violation of this warranty, the Town shall have the right to annul this Agreement without liability.

SECTION XVI — TERMINATION OF THIS AGREEMENT

- (a) This Agreement may be terminated, in whole or in part, in writing, by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate; and (2) an opportunity for consultation with the terminating party prior to termination.



If termination for default of the Consultant is effected by the Town pursuant to paragraph (a), Consultant shall be paid only for all work satisfactorily completed prior to the notice of termination. Consultant shall remain liable for the damages, if any, caused by its default.

- (b) This Agreement may be terminated, in whole or in part, in writing, by the Town for its convenience, provided that the Consultant is afforded the same notice and consultation opportunity specified in paragraph (a) above. Only Town has the unilateral right to terminate for its convenience. Consultant recognizes that other covenants of the Agreement serve as consideration for and support this unilateral right of Town.

If termination for convenience is effected by the Town, an equitable adjustment in compensation payable to Consultant shall be made, which equitable adjustment shall include a reasonable profit for services or other work already properly performed prior to the notice of intent to terminate for which profit has not been already included in an invoice. For any such termination for convenience, the equitable adjustment shall provide for payment to the Consultant for services rendered and expenses incurred prior to receipt of the notice of intent to terminate, in addition to termination settlement costs directly and reasonably incurred by the Consultant relating to commitments (e.g., suppliers, subcontractors) which had become irrevocable prior to receipt of the notice of intent to terminate. Except as expressly stated above in this paragraph (b), Town shall have no further liability to compensate or pay Consultant.

- (c) Upon receipt of termination action under paragraphs (a) or (b) above, the Consultant shall
1. promptly discontinue all affected work (unless the notice directs otherwise) and
 2. deliver or otherwise make available to the Town all data, drawings, reports specifications, summaries and other such information, as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process.
- (d) Prior to termination, the Town may take over the work and may award another party an Agreement to complete the work described in this Agreement.
- (e) If, after termination for failure of the Consultant to fulfill contractual obligations, under paragraph (a) above, it is determined that the Consultant had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the Town. In such event, adjustment of the contracted price shall be made as provided in paragraph (b) above.
- (f) The parties may also terminate this Agreement by mutual written agreement.



SECTION XVII — DURATION OF AGREEMENT

The Agreement term will be for up to two (2) years with the option for the town to extend the Agreement for an additional one (1) year term. The Town may terminate the agreement with a thirty (30) days' notice without giving any reason.

SECTION XVIII — CLEAN AIR ACT

If any work order issued under this contract exceeds \$100,000, the Consultant shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and U.S. Environmental Protection Agency regulations (40 C.F.R. Part 15). The Consultant shall include this clause in any subcontracts over \$100,000.

SECTION XIX — ENERGY POLICY AND CONSERVATION ACT

The Consultant shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

SECTION XX — TRUTH-IN-NEGOTIATION

Consultant certifies that the wage rates and other factual unit costs, supporting the compensation are accurate, complete and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Town determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the contract.

SECTION XXI — DRUG FREE WORK PLACE

The Consultant shall comply with all mandatory standards and policies relating to the Federal Drug-Free Workplace Act's Requirements.

SECTION XXII — SPECIAL PROVISIONS

- (a) The Consultant agrees to comply with Title VI of the Civil Right Act of 1964, the Davis-Bacon Act, the Copeland Anti-Kickback Act, the Contract Work Hours Standard Act, the Health and Safety Standards Act, Section 109 of the Housing and Community Development Act of 1974, Section 3 compliance in the Provision of Training, Employment and Business Opportunities, and the Consultant further agrees not to maintain or provide for its employees any facilities that are segregated on a basis of race, color, creed, national origin, handicap, religion, ancestry, sex or age.



- (b) No officer or employee of the Town or its designees or agents, no member of the governing body, and no other public official of the Town who exercises any function or responsibility with respect to this contract, during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds. Consultant shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (c) The Consultant shall perform the work herein above set out as an independent contractor free from direct control or supervision by the Town as to the means and methods of performing the work and all persons engaged in the performance of the work shall be solely the servants or employees of the Consultant or its subcontractors, as the case may be.
- (d) The Consultant agrees to comply with Executive Order 11246, which prohibits discrimination in employment regarding race, color, creed, national origin, handicap, religion, ancestry, sex, or age. An excerpt of such Executive Order being attached hereto and made a part hereto by reference. The Consultant further agrees to comply with the filing of any and all information and reports required by the Executive Order and by the rules, regulations, and orders of the Secretary of Labor.

SECTION XXIII— INSURANCE AND INDEMNIFICATION

- (a) Consultant shall indemnify and hold harmless the Town, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of the Consultant and persons employed or utilized by the Consultant in the performance of the Agreement.
- (b) The Consultant shall not commence any work pursuant to this Agreement until all insurance required under this Section has been obtained. Consultant must have and provide to Town a Certificate of Insurance showing the Town of Cutler Bay as additional insured. The Consultant shall maintain during the term of this Agreement the following insurance coverage for services to be performed for Town Departments:

Workmen's Compensation Insurance — as required by law. (Florida State Statute 440.02)

Professional Liability Insurance — \$1,000,000 per occurrence.

Commercial General including Contractual Liability Insurance — \$1,000,000 per occurrence.

Comprehensive Automobile Liability Insurance — This coverage must be written on the comprehensive form of policy. The basic form is not acceptable.



The policy must contain minimum limits of liability as follows or \$500,000 Combined Single Limit.

- \$500,000 each person;
- \$500,000 each occurrence bodily injury;
- \$500,000 each occurrence property damage;

The policy must provide coverage for any automobiles.

- (c) All insurance policies must be issued by companies authorized to do business under the laws of the State of Florida. The companies must be rated no less than “B” as to management and no less than “Class V” as to strength by the latest edition of Best’s Insurance guide, published by A.M.

Best Company, Olwick, New Jersey, or its equivalent, or, at Town's discretion, the companies must hold a valid Florida Certificate of Authority as shown in the latest “List of All Insurance Companies Authorized or Approved to do Business in Florida,” issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

- (d) The Consultant shall furnish certificates of insurance to the Cutler Bay Town Center: 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida 33189, prior to the commencement of operations, which certificates shall clearly indicate that the Consultant has obtained insurance in the type, amount, and classification as required for strict compliance with this Section and that no material change or cancellation of this insurance shall be effective without thirty (30) days prior written notice to the Town.
- (e) Compliance with the foregoing requirements shall not relieve the Consultant of the liabilities and obligations under this Section or under any other portion of this Agreement, and the Town shall have the right to inspect the original insurance policies in the event that submitted certificates of insurance are inadequate to ascertain compliance with required coverage.

SECTION XIV— ENTIRETY OF AGREEMENT; VENUE; NO JURY-TRIAL

- (a) This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing, signed by both parties hereto, and approved by the Town. The Town Manager shall act for Town hereunder.



- (b) This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida, and venue for any litigation hereunder shall be made in Miami-Dade County, Florida.
- (c) Each party hereby expressly waives any right to trial by jury in any litigation hereunder or which is in any way related to the conduct or course of dealing between the parties.

IN WITNESS WHEREOF the parties hereto have executed these presents this ____ day of 2015.

Consultant:

Town of Cutler Bay
 10720 Caribbean Blvd., Suite 105
 Cutler Bay, Florida 33189

By: _____
 Signed

 Name/Title

By: _____
 Rafael G. Casals
 Town Manager

Attest:

Attest:

 Interim Town Clerk

Or

Approved as to form and legal sufficiency:

Witnessed:
 By: _____
 Signed

 Name/Title

 WEISS SEROTA HELFMAN COLE
 & BIERMAN, P.L.
 Town Attorney

By: _____
 Signed

 Name/Title

Town Resolution #: 15- _____



EXHIBIT "A"

CONSULTANT'S STAFF HOURLY RATES

[SPACE LEFT INTENTIONALLY BLANK]



APPENDIX A

ACKNOWLEDGEMENT, WARRANTY AND ACCEPTANCE

A. Consultant warrants that it is willing and able to comply with all applicable State of Florida laws, rules and regulations.

B. Consultant warrants that it has read, understands and is willing to comply with all of the requirements of the RFQ and the addendum/ addenda.

C. Consultant warrants that it will not delegate or subcontract its responsibilities under an agreement without the prior written permission of the Council.

D. Consultant warrants that all information provided by it in connection with this submittal (response) is true and accurate.

E. CONTINGENCY FEE AND CODE OF ETHICS WARRANTY:

Respondent warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and respondent has not, and will not pay a fee, the amount of which is contingent upon the Town of Cutler Bay awarding the contract. Respondent warrants that neither it, nor any principal, employee, agent, representative has procured, or attempted to procure, the contract in violation of any of the provisions of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinances. Further, respondent acknowledges that a violation of this warranty will result in the termination of the contract and forfeiture of funds paid, or to be paid, to the respondent, if the respondent is chosen for performance of the contract.

Signature of Official: _____

Name (typed): _____

Title: _____

Consultant: _____

Date: _____



APPENDIX B

NON-COLLUSIVE AFFIDAVIT

State of _____

SS:

County of _____

_____ being first duly sworn, deposes and says

that:

(1) He/she is the, (Owner, Partner, Officer, Representative or Agent) of:

_____ the respondent that has submitted the attached proposal;

(2) He/she is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;

(3) Such proposal is genuine and is not a collusive or a sham proposal;

(4) Neither the said respondent nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other respondent or any person to submit a collusive or sham response in connection with the work for which the attached proposal has been submitted, or to refrain from responding in connection with such work, or have in any manner, directly or indirectly, sought by agreement or collusion, communication, or conference with any respondent or person to fix the proposal submitted or to secure through any collusion, conspiracy, connivance, or unlawful agreement, any advantage against the Town of Cutler Bay, or any person interested in the proposed work required.

Signed, sealed and delivered

In the presence of

By: _____

(Printed Name)

(Title)

Appendix-B Page 1 of 2



ACKNOWLEDGMENT

State of Florida

County of _____

On this _____ day of _____, 2015, before me, the undersigned

Notary Public of the State of Florida personally appeared

and whose name(s) is/are subscribed to the within instrument, and he/she/they acknowledge that he/she/they executed it.

WITNESS my hand
and official seal

NOTARY PUBLIC, STATE OF FLORIDA

NOTARY PUBLIC
SEAL OF OFFICE:

(Name of Notary Public: Print, Stamp or
Type as commissioned.)
 Personally known to me, or
 Produced identification:

(Type of Identification Produced)
 Did take an oath. or
 Did not take an oath.



APPENDIX C

**SWORN STATEMENT PURSUANT TO
SECTION 287.133 (3)(a) FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to the TOWN OF CUTLER BAY, FLORIDA

By _____

For _____

Whose business address is: _____

And (if applicable) its Federal Employer Identification Number (FEIN) is: _____

If the entity has no FEIN, include the Social Security Number of the individual signing this

Sworn statement - S.S. # _____

2. I understand that a "public entity crime" as defined In Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with any agency or political subdivision of any other State or of the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or an agency or any political subdivision of any other state or of the United Sates and involving antitrust fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result or a jury verdict, non jury trial, or entry of a plea or guilty or nolo contendere.



4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

- A. A predecessor or successor of a person convicted of a public entity crime; or
- B. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws or any state or of the United States with the legal power to enter into a binding contract and which proposes or applies to propose on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of any entity.

Signed, sealed and delivered

In the presence:

By:

(Printed Name)

(Title)



ACKNOWLEDGMENT

State of Florida

County of _____

On this ____ day of _____, 2015, before me, the undersigned Notary Public Of the State of Florida personally appeared _____ and whose name(s) is/are subscribed to the within instrument, and he/she/they acknowledge that he/she/they executed it.

WITNESS my hand and official seal

NOTARY PUBLIC, STATE OF FLORIDA

NOTARY PUBLIC
SEAL OF OFFICE:

(Name of Notary Public: Print, Stamp or Type as Commissioned.)
o Personally known to me; or
o Produced identification:

(Type of Identification Produced)
o Did take an oath. or
o Did not take an oath.