



**RFQ #15-12  
PUBLIC WORKS DEPARTMENT  
“HVAC EQUIPMENT AND CONTROLS  
DESIGN, BIDDING, AND CONSTRUCTION MANAGEMENT  
SERVICES”**

**NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 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 sub consultants/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 sub consultants, 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.

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**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 \_\_\_\_\_ 2016.**

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 #: 16- \_\_\_\_\_

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**EXHIBIT "A"**

**CONSULTANT'S STAFF HOURLY RATES**

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**END OF DOCUMENT**