

TOWN OF CUTLER BAY
LANDSCAPE MAINTENANCE SERVICES (RIGHT-OF-WAYS)
RFP #13-02
“AMENDMENT # 4”
AGREEMENT
LANDSCAPE MAINTENANCE SERVICES (RIGHT-OF-WAYS)

THIS AGREEMENT is made this 1 day of January, 2018 by and between the Town of Cutler Bay, Florida (the “Town”) and **VisualScape, Inc.** (the “Contractor”).

The parties, for the consideration provided for below, mutually agree as follows:

- 1.1.1 **SCOPE OF WORK** The Contractor shall furnish all labor, materials, supervision, equipment, supplies, and incidentals required to perform the scope of work as outlined in the Detailed Specifications of this Agreement, attached hereto as Exhibit “A” (the “Work”).
- 1.2 **COMPENSATION/PAYMENT**
 - 1.2.1 Contractor shall provide the Town with an invoice on a monthly basis within ten (10) days of the end of each month stating the services provided in the preceding month.
 - 1.2.2 The Town shall make payment on said invoices of approved amounts due, as required under the Florida Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished. If there is a dispute with regard to an invoice, the Town may withhold payment until all requested supporting materials are received from Contractor and the dispute is resolved.
 - 1.2.3 Contractor shall be compensated at the unit prices specified in the Bid Proposal, attached hereto as Exhibit “B”, based upon the actual Work completed for the month. The total compensation under this Agreement shall not exceed **\$ 314,200.40** (the “Agreement Sum”).
- 1.3 **TERM** This Agreement shall be effective upon execution by both parties and shall continue for a term of three (3) years. At its sole discretion, the Town shall have an option to renew this Agreement upon the same terms and conditions for up to three (3) additional years (the “Option”). This Option may be exercised at the sole discretion of the Town Manager. Such extension shall be effective upon receipt of a written notice from the Town Manager to the Contractor received no later than thirty (30) days prior to the date of termination.
- 1.4 **PROTECTION OF PROPERTY AND THE PUBLIC** The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect public and private property from injury or loss arising in connection with this Agreement as follows:
 - 1.4.1 The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the work sites, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the work site where the Work is being performed.

- 1.4.2 The Contractor shall erect and properly maintain at all times, all necessary safeguards, including sufficient lights and danger signals on or near the Work, from sunset to sunrise, suitable railings, barricades, or other hazards or other protective devices about unfinished work, open trenches, embankments, or other hazards and obstructions to traffic; provide all necessary security staff on the Work by day or by night for the safety of the public; and take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.
- 1.4.3 The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, walks, drives, or structures of the Town and of any land adjoining the work site), which may be caused by Contractor. The Contractor shall, at all times while the Work is in progress, use extraordinary care to see that adjacent property, whether real or personal, is not endangered in any way by reason of fire, water, or construction operations, and shall take all necessary or directed steps, to protect the property.
- 1.4.4 Buildings, sidewalks, fences, shade trees, lawns and all other improvements shall be duly protected from damage by Contractor. Property obstructions, such as sewers, drains, water or gas lines, conduits, railroads, poles, walls, posts, galleries, bridges, manholes, valve boxes, meter boxes, street monuments, etc., shall be carefully protected from injury and shall not be displaced. The Contractor shall give due notice to any department or public service corporation controlling such items as manholes, valve boxes, meter boxes, street monuments, etc., prior to adjusting them to grade and shall be held strictly liable to the affected utility if any such appliances are disturbed, damaged or covered up during the course of the Work.

1.5 **INDEMNIFICATION.**

- 1.5.1 The parties agree that 1% of the total compensation paid to the Contractor for the performance of this agreement shall represent the specific consideration for the Contractor's indemnification of the Town as set forth in this Section 1.5 and in the Terms and Conditions.
- 1.5.2 To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the Town and their consultants, agents and employees from and against any and all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of attorneys and other professionals and court costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from and (b) is caused in whole or in part by any willful and wanton or negligent or gross negligent acts or omission of Contractor, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

1.6 **AGREEMENT DOCUMENTS.** The following documents shall, by this reference, be considered part of this Agreement:

1. Request for Proposal #13-02
2. All Addendums;
3. Contract Agreement;
4. Proposal;
5. Detailed Specifications;
6. Qualification Statement;
7. Public Entity Crime Form;
8. Insurance Certificates

1.7 **CONTRACTOR'S EMPLOYEES.**

- 1.7.1 The Contractor shall at all times have a competent English speaking supervisor on site who thoroughly understands the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work. Contractor's employees shall serve the public in a courteous, helpful, and impartial manner.
- 1.7.2 Contractor's employees shall wear a clean uniform that provides identification of both the Contractor's company and the name of the employee.
- 1.7.3 Contractor shall, upon receipt of a written request from the Town, immediately exclude any employee of Contractor from providing Work under this Agreement.
- 1.7.4 The Work contemplated in this Agreement is on public property, accordingly no alcoholic beverages shall be allowed.
- 1.7.5 All references in this Agreement to the Contractor shall include Contractor's employees or subcontractors, wherever applicable.

1.8 **VEHICLES AND EQUIPMENT.** Contractor shall have on hand at all times and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Agreement. All vehicles used by Contractor to provide services under this Agreement shall be painted uniformly with the name of Contractor, business telephone number, and the number of the vehicle in letters legible by the public. The Town may require the repair or replacement of equipment as reasonably necessary. No other advertising shall be permitted on the vehicles. A magnetic sign displaying the Town of Cutler Bay Logo will be required on vehicles at all times.

1.9 **INSURANCE.** The Contractor shall secure and maintain throughout the duration of this Agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the Town against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida, be rated AB or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers. Any insurance maintained by the Town shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include a minimum of:

- 1.9.1 **Worker's Compensation and Employer's Liability Insurance** Coverage 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.
- 1.9.2 **Comprehensive Automobile and Vehicle Liability Insurance** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims for injuries to members of the public and/or damages to property of others arising from the Contractor's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office. The policy must provide coverage for non-owned and hired automobiles.
- 1.9.3 **Comprehensive General Liability Insurance** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.
- 1.9.4 **Certificate of Insurance** Contractor shall provide the Town Manager with Certificates of Insurance for all required policies. 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 require the Contractor to provide 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 or policies 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 Manager.
- 1.9.5 **Additional Insured** The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from operations performed by or on behalf of Contractor in performance of this Agreement. Contractor'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 Contractor's insurance. Contractor'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 in the same manner as if separate policies had been issued to each. All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The Contractor shall be responsible for the payment of any deductible or self-insured retention in the event of any claim.

- 1.10 **ASSIGNMENT AND AMENDMENT.** No assignment by the Contractor of this Agreement or any part of it, or any monies due or to become due, shall be made, nor shall the Contractor hire a subcontractor to perform its duties under this Agreement without prior written approval of the Town. This Agreement may only be amended, by the parties, with the same formalities as this Agreement.
- 1.11 **TERMINATION.**
- 1.11.1 Either party may terminate this Agreement without cause upon 30 days written notice to the other party.
- 1.11.2 Upon notice of such termination, the Town shall determine the amounts due to the Contractor for services performed up to the date of termination. The Contractor shall not be entitled to payment of any lost profits or for Work performed after the date of termination.
- 1.11.3 After receipt of a notice of termination, and except as otherwise directed, the Contractor shall stop all Work under this Agreement, and shall do so on the date specified in the notice of termination.
- 1.11.4 The Town may terminate this Agreement upon five (5) days written notice if the Contractor defaults on any material term of this Agreement.
- 1.12 **GOVERNING LAW AND VENUE.** The law of the State of Florida shall govern this Agreement. Any proceedings pursuant to this Agreement shall be brought in Miami-Dade County, Florida. In the event of litigation to settle issues arising hereunder, the prevailing party in such litigation shall be entitled to recover against the other party its costs and expenses, including reasonable attorney fees, which shall include any fees and costs attributable to appellate proceedings arising on and of such litigation.
- 1.13 **ACCESS TO PUBLIC RECORDS.** The Contractor shall comply with the applicable provisions of Chapter 119, Florida Statutes. The Town shall have the right to immediately terminate this Agreement for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor shall retain all records associated with this Agreement for a period of three (3) years from the date of Termination. Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertinent to this Contract, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the Town and the public to all documents subject to disclosure under applicable law. For purposes of this section, the term: (a) "Contractor" means an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2); and (b) "Public agency" means a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law. In addition to other contract requirements provided by law, Contractor shall comply with public records laws, specifically to: (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law; (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

NOTICE PURSUANT TO §119.0701(2)(a), FLORIDA STATUTES
IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION
OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY
TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT,
CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: Debra E. Eastman, MMC, Town Clerk
Mailing address: 10720 Caribbean Boulevard
Suite 105
Cutler Bay, FL 33189
Telephone number: 305-234-4262
Email: DEastman@CutlerBay-FL.gov

- 1.14 **INSPECTION AND AUDIT.** During the term of this Agreement and for three (3) years from the date of termination the Contractor shall allow Town representatives access, during reasonable business hours, to Contractor's and, if applicable, subcontractor's records related to this Agreement for the purposes of inspection or audit of such records. If upon audit of such records, the Town determines the Contractor was paid for services not performed, upon receipt of written demand by the Town, the Contractor shall remit such payments to the Town.
- 1.15 **SEVERABILITY.** If a term, provision, covenant, contract or condition of this contract is held to be void, invalid, or unenforceable, the same shall not affect any other portion of this Agreement and the remainder shall be effective as though every term, provision, covenant, contract or condition had not been contained herein.
- 1.16 **WAIVER OF JURY TRIAL.** The parties irrevocably, knowingly agree to waive their rights to a trial by jury in any action to enforce the terms or conditions of this Agreement.
- 1.17 **COUNTERPARTS.** This Agreement may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.
- 1.18 **INDEPENDENT CONTRACTOR.** It is expressly agreed and understood that the Contractor shall be in all respects an independent contractor as to Work, and that Contractor is in no respect an agent, servant or employee of the Town. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits of the Town, nor any rights generally afforded classified or unclassified employees. Contractor further understands that Florida Worker's Compensation benefits available to employees of the Town are not available to Contractor, and agrees to provide worker's compensation insurance for any employee or agent of Contractor rendering services to the Town under this Agreement.

All employees and subcontractors of the Contractor shall be considered to be, at all times, the sole employees or contractors of Contractor, under its sole discretion and not an employee, contractor or agent of the Town.

- 1.19 **ACCIDENT PREVENTION AND REGULATIONS.** Precautions shall be exercised at all times for the protection of persons and property. The Contractor and subcontractors shall conform to all OSHA, Federal, State, County and Town regulations while performing under the terms and conditions of this Agreement.

Any fines levied by the above-mentioned authorities, because of inadequacies to comply with these requirements, shall be borne solely by Contractor responsible for same.

- 1.20 **BACKGROUND CHECKS.** The Contractor will be responsible for maintaining current background checks on all employees and subcontractor employees involved in the performance of this Work. 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.
- 1.21 **LAWS, RULES & REGULATIONS.** Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Agreement. Contractor shall secure all permits, fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this Agreement for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the Town.
- 1.22 **POLICY OF NON-DISCRIMINATION.** The Contractor shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability in the performance of work under this Agreement.
- 1.23 **NON-WAIVER.** The approval, and/or acceptance of any part of the Work by the Town shall not operate as a waiver by Town of any other terms and conditions of the Agreement.
- 1.24 **NOTICES.** Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

Town:

Town of Cutler Bay
Town Manager's Office
10720 Caribbean Blvd., Suite# 105
Cutler Bay, FL 33189

Contractor:

VisualScape, Inc.
15980 NW 117 Ave
Miami, FL 33018

[REMAINDER OF THE PAGE LEFT INTENTIONALLY BLANK]

[SIGNATURES ON THE FOLLOWING PAGE]

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

Attest:

TOWN OF CUTLER BAY

By: _____
Debra E. Eastman, MMC, Town Clerk

By: _____
Rafael G. Casals – Town Manager

By: _____
Town Attorney

Town Resolution # **13-28 (Original)**
Town Resolution # **13-90 (Amendment #1)**
Town Resolution # **15-51 (Amendment #2)**
Town Resolution # **16-62 (Amendment #3)**
Town Resolution # **18-__ (Amendment #4)**

Signed, sealed and witnessed in the
presence of:

CONTRACTOR: VisualScape, Inc.

By: _____

By: _____

(*) In the event that the Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.

END OF DOCUMENT



**TOWN OF CUTLER BAY
VISUALSCAPE, INC.
RFP #13-02**

“AMENDMENT # 4”

**LANDSCAPE MAINTENANCE SERVICES (RIGHT-OF-WAYS)
ADDITIONAL SITES**

**I. Caribbean Boulevard from SW 107 Avenue to the C-100 Canal Bridge
(All Medians, Bullnoses, Traffic Circles, Swales, Plant bed Areas, and
Right-of-Ways)**

- Trim and weed Shrubs and Groundcovers *Yearly Frequency-28*
- Mowing of Sod at Bus Pads and Shelters 4' perimeter
- Removal of dead fronds from Triangle Palms on median
- Tree trimming and lifting *Yearly Frequency-1*
- Trim Ornamental Grasses *Yearly Frequency-1*
- Fertilization (Trees, Shrubs & Groundcovers) *Yearly Frequency-2*

Annual Cost \$2,600

**II. Cutler Bay High School Swale
(SW 87 Avenue from SW 212 Street to approximately SW 208 Terrace)**

- 12 maintenance services

Annual Cost \$1,800

**III. South side of SW 188 Street from approx. SW 83 Place to SW 82 Avenue
(Swales, Plant bed Areas, and Right-of-Ways)**

- Trim and weed Shrubs and Groundcovers *Yearly Frequency-28*
- Tree trimming and lifting *Yearly Frequency-1*
- Trim Ornamental Grasses *Yearly Frequency-1*
- Fertilization (Trees, Shrubs & Groundcovers) *Yearly Frequency-2*

Annual Cost \$2,800

Total Annual Cost \$7,200