

TOWN OF CUTLER BAY
REQUEST FOR PROPOSAL

RFP No. 22-05



**DESIGN SERVICES FOR 16-ACRE LEGACY PARK
AND MUNICIPAL COMPLEX**

RFP DUE MARCH 10, 2023
AT 3:00 PM EST

TOWN OF CUTLER BAY
REQUEST FOR PROPOSALS
RFP No. 22-05
DESIGN SERVICES FOR 16-ACRE LEGACY PARK AND MUNICIPAL COMPLEX

The Town of Cutler Bay is requesting proposals from the three firms selected through the RFQ process, to provide **DESIGN SERVICES FOR 16-ACRE LEGACY PARK AND MUNICIPAL COMPLEX**.

Selected Firms should visit the Town’s website at www.cutlerbay-fl.gov/rfps to obtain the Request for Proposal Package. They may also be picked up during normal business hours at the Office of the Town Clerk, Mauricio Melinu, located at:

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

A non-mandatory RFP Meeting will be held, for the selected firms, on **Wednesday, February 1, 2023 at 2:00 PM EST**. The meeting will be available electronically using Zoom communications media technology platform. Registration is required. To register in advance, please visit https://us06web.zoom.us/webinar/register/WN_jicRCw2yS2CZtIcHn_jkAA

Pursuant to Town Code Chapter 24, Article II, Section 24-228 of the Town Charter, public notice is hereby given that a **“Cone of Silence”** is imposed concerning the Town’s competitive purchasing process, which generally prohibits communications concerning the RFQ from the time of advertisement of the RFQ until such time as the Town Manager makes a written recommendation to the Town Council concerning the competitive purchase transaction. Please see the detailed specifications for the public solicitation for services for a statement fully disclosing the requirements of the **“Cone of Silence”**.

Pursuant to Section 4-19 of the Town Code; Section 7.6 of 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. Please see the detailed specifications of this solicitation for further details.

Women/Minority Owned and Emerging Small Businesses are invited to submit bids on this project.

Sealed RFP submittals must be received by **March 10, 2023, at 3:00 PM EST**. Late submissions may not be considered. The proposer shall bear all costs associated with the preparation and submission of the qualifications package.

The Town of Cutler Bay reserves the right to accept or reject any and/or all Qualification Packages or parts of Qualification Packages, and to request re-submittal of the required materials or services.

We look forward to reviewing your submissions.

Sincerely,
Rafael G. Casals, ICMA-CM, CFM
Town Manager

TOWN OF CUTLER BAY
RFP No. 22-05
DESIGN SERVICES FOR 16-ACRE LEGACY PARK AND MUNICIPAL COMPLEX

Introduction

The Town of Cutler Bay (the “Town”), a municipality located in the southern portion of Miami-Dade County, Florida, is accepting proposals from the three (3) Firms short-listed during the RFQ No. 22-05. The selected firms are requested to provide architectural, engineering, and landscape design services for the design of the new Legacy Park and Municipal Complex.

History

The Town was incorporated as the 35th municipality in Miami-Dade County in 2005 and has an estimated 44,291 residents (Census.gov, 2021). It is comprised of approximately 10 square miles bounded by S.W. 184 Street to the north, US 1 Busway to the west, S.W. 232 Street to the south, and Biscayne Bay to the East. The Town abuts the Village of Palmetto Bay to the north and unincorporated Miami-Dade County to the west and south. It is currently characterized by both established and developing residential communities and commercial development along US-1 and Old Cutler Road. <https://www.cutlerbay-fl.gov/community/page/town-history>

Location

The proposed Project will be located on a vacant 16-acre parcel located in the heart of the community, east of Old Cutler Road and north of S.W. 212 Street.

Project

The vision for this project is to transform the 16-acre parcel into a central gathering place that will become the heart of the community. The design will include a resiliency park and municipal building(s) that will house the Town Hall, a Police Station, and a Community Center with a Pool; a combined projected footprint of 50,000 net square feet. The selected firm will use the “16 Acres: Legacy Park and Municipal Complex Executive Summary” (Attachment “A”) as a guide to develop a final design for this project that is iconic, resilient, and complements the surroundings.

The selected firm shall develop a complete design and provide the overall administration and management of all aspects of the design of the project. The design should be successfully completed within one (1) year of being awarded the project. This includes considerations of project components that are not a part of the design project (Traffic, Geo-technical, Construction, Permitting, Fees, etc.). The project is being funded through a voter-approved General Obligation Bond that passed in March of 2022.

Scope of Services

The project design shall be provided by a multi-disciplined team of Architectural, Design and Engineering professionals and shall provide design services, engineering services, cost estimating, cost management, value analysis, value engineering, cost tradeoff pricing, and peer review. The design team will use the “16 Acres: Legacy Park and Municipal Complex Executive Summary” (Attachment “A”) as a guide to develop the site design and to incorporate some of the public feedback received included in the summary. Design shall be completed in accordance with the latest editions of all applicable Federal, State, County and Town codes/regulations.

To further assist in developing a proposal relative to your potential responsibilities as an A/E team member, the breakdown of responsibilities may include, but are not limited to the following:

1. The Architect will function as the lead consultant for the A/E Team. The Architect will be responsible for leading and coordinating the activities of all their sub-consultants and confirming that the document sets are fully coordinated.
2. As part of this proposal, the Architect shall include the following services as part of their scope:
 - Master Site Planning
 - Architectural and Interior Design Services
 - Civil Engineering
 - Mechanical, Electrical, Plumbing Engineering
 - Fire Protection
 - Structural Engineering
 - Parking Garage Consultant
 - Pool/Aquatic Consultant
 - LEED or Equivalent Consultant
 - Low Voltage Design
 - Security
 - Equipment Planning
 - Furniture, Fixtures, and Equipment Design Services
 - Signage (Interior and Exterior)
 - Vertical Transportation
 - Landscape Design Services
 - Acoustical and Vibration Consultant
 - Wind-Wake Engineering Consultant
 - Traffic Consultant
 - Other Specialty Design Services as required

The following services can be assumed as contracted directly with the Town and will not be contracted with A/E Services:

- Geotechnical Services
 - Commissioning Agents (i.e. – MEP, building enclosure, etc.)
3. The Architect shall be responsible for reviewing all code requirements as well as drawing submissions to the Florida State Department of Health and various governmental agencies for zoning, permitting, etc. When necessary, this will be in conjunction with the Civil Engineer’s efforts.
 4. The Architect and Engineers will be required to provide an early Building Basis of Design (BOD) including MEP systems for evaluation by the Town and their Owner’s Representative (Stantec) to ensure these standards are maintained throughout the design.
 5. The Architect shall be responsible for evaluating the existing site and surrounding areas as they relate to the project.
 6. With input from the Town, Owner’s Representative (Stantec), and the Architect shall lead the design process through the various stages (i.e. – master planning/massing of the site, programming, schematic design, design development, construction documents) and issue packages as required for pricing, permitting and ultimately construction.
 7. The Architect shall be responsible for incorporating all equipment requirements into their design. This includes but is not limited to the review of equipment technical specifications during the design process, development of an Owner/Contractor/Vendor equipment responsibilities matrix and the placement of all equipment on the drawings.

8. The Architect shall participate in a design and construction process that supports a speed-to-market effort by the project team. This includes the Town's effort of early on-boarding of the Construction Manager and their Subcontracts as design assist partners.
9. The Architect will be responsible to design the project to meet the Owner's project budget. The Architect will support ongoing value engineering by the Construction Manager and Project Manager throughout the design process.
10. The Construction Document Phase shall realize the development of final working drawings. During this phase, the A/E will work in conjunction with the project team in an ongoing effort to ensure these final drawings are consistent with the scope of work approved by the Owner and are covered under the Guaranteed Maximum Price.
11. Architectural services during the construction period can be assumed as construction administration. The Architect's primary responsibilities during this phase will include:
 - Active participation in the effort to implement design documents.
 - Timely processing of RFI's, Samples, Specifications, and Submittals.
 - Attendance at progress and coordination meetings as requested by the Owner or otherwise required to maintain construction progress.
 - Regular jobsite inspections and reporting.

Public Information

The selected Firm will coordinate and conduct program validation, design review meetings, public involvement meetings, and council meetings to facilitate the project, gain additional public feedback, and will maintain and provide all records of these meetings with the action agendas. The selected Firm will attend and participate in all design team meetings and presentations held by the Town.

Project Budget

The selected Firm must ensure their design will provide for the completion of the entire project (including permitting fees, construction, etc.) to fall below or within the total project budget. The selected Firm will provide a budget for their services, as well as all consultants, a detailed staffing plan for the duration of the project, hourly rates, estimated hours by phase, reimbursables, and any other anticipated fees. In addition, the selected Firm will provide cost estimating, cost management, value analysis, value engineering, and cost tradeoff pricing.

Timeline

The design of this project must be completed within one year or less from the time the selected Firm is awarded this project.

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SECTION 1: TOWN REGULATORY REQUIREMENTS

1.1 Cone of Silence

Notwithstanding any other provision of these specifications, the provisions of the Town "Cone of Silence" are applicable to this transaction. The entirety of these provisions can be found in the Town Code Chapter 24, Article II, Division 9, Section 24-227, et seq. and the Town Charter.

The "Cone of Silence," as used herein, means a prohibition on any communication regarding a particular Request for Proposal ("RFP"), Request for Qualification ("RFQ") or bid, between:

- 1.1.1 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 RFQ, RFP, and bid after the advertisement of said 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:

- 1.1.2 Oral communications at pre-bid conferences.
- 1.1.3 Oral presentations made before the Town Council in a public meeting.
- 1.1.4 Public presentations made to the Town Council during any duly noticed public meeting.
- 1.1.5 Communication in writing at any time with any Town employee, unless specifically prohibited by the applicable 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.
- 1.1.6 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 RFQ, RFP or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.
- 1.1.7 Communications with the Town Attorney and his or her staff.
- 1.1.8 Duly noticed site visits to determine the competency of proposer regarding a particular proposal during the period between the opening of proposals and the time the Town Manager makes his or her written recommendation.
- 1.1.9 Any emergency procurement of goods or services pursuant to Town Code.
- 1.1.10 Responses to the Town's request for clarification or additional information.
- 1.1.11 Contract negotiations during any duly noticed public meeting.
- 1.1.12 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’s office at (305) 854-0800 for any questions concerning Cone of Silence compliance. Violation of the Cone of Silence by an individual or Firm shall render any RFQ award, RFP award or bid award to said individual or Firm voidable by the Town Council and/or Town Manager.

1.2 Campaign Finance Restrictions on Vendors

Pursuant to Town Code Section 4-19 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:

1.2.1 General Requirements:

- A. Any vendor required to disclose campaign contributions pursuant to the Charter of the Town, 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 same to the clerk within ten days of its acceptance or prior to being awarded any additional contract or renewal, whichever occurs first
- E. The Town Clerk shall file a quarterly report listing the vendor disclosures in the quarter.

1.2.2 Disqualification:

As per Section 7.6 of the Town Charter, if a Vendor of products or services who directly or through a member of the person’s immediate family or through a political action committee or through any other person makes a campaign contribution to a Town candidate and fails to disclose it then he/she/it shall be barred from selling any product or service to the Town for a period of two years following the swearing in of the subject elected official.

1.3 Lobbyist Registration

Individuals and Firms 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. 2-236, et seq. of the Town Code. Please contact the Town Clerk’s Office at (305) 234-4262 for additional information. Proposers shall complete a “Lobbyist Registration for Oral Presentation” form and all persons listed thereon shall be registered only for the purposes of the oral presentation, if any. Lobbyists are required to register and pay applicable fees prior to engaging in any other lobbying activity.

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1.4 Women/Minority Owned and Emerging Small Businesses Bid Submittal

- 1.4.1 Town affirms it has encouraged women-owned, minority owned, and disadvantaged businesses of the project and be responsive to the opportunity of the award of this contract.
- 1.4.2 Consultant, or any subconsultant performing work under this contract, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out all applicable requirements of 49 CFE Part 26 in the award and administration of this contract. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Town deems appropriate.

1.5 American Rescue Plan Act Provision

If this provision is selected, the Services will be fully or partially funded utilizing the Coronavirus State and Local Fiscal Recovery Funds allocated to the Town pursuant to the American Rescue Plan Act (“ARPA Funding”) and the Successful Respondent shall be required to comply with the ARPA Regulations.

- 1.5.1 Individual or Firm acknowledges that compensation for the Services performed under the Agreement may be fully or partially funded using ARPA Funding. To utilize ARPA funding, the Town shall incorporate the federally required contract provisions in the Agreement awarded under this RFP. The Successful Respondent shall be required to comply with all laws, rules, regulations, policies, and guidelines (including any subsequent amendments to such laws, regulations, policies, and guidelines) required by the American Rescue Plan Act, including, but not limited to the following documents and guidelines, which are incorporated herein and made a part of this RFP: (i) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), as applicable; (ii) The U.S. Department of the Treasury’s Final Rule governing ARPA; (iii) U.S. Department of the Treasury Coronavirus State and Local Fiscal Recovery Funds Award Terms and Conditions (Assistance Listing Number 21.019); (iv) The U.S. Department of the Treasury’s Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions; (v) American Rescue Plan Act Coronavirus Local Fiscal Recovery Fund Agreement; and (vi) The U.S. Department of the Treasury’s ARPA Compliance and Reporting Guidance (collectively, the “ARPA Regulations”). A copy of the ARPA Regulations are available for inspection by the Consultant at the Office of the Town Clerk and at the following Town link: <https://www.cutlerbay-fl.gov/arpa>

[END OF SECTION]

SECTION 2: SUBMISSION GUIDELINES

2.1 Overview

The Town is committed to efficient government administration. A small core of the Town staff has been serving its residents, businesses, and visitors exceptionally well through their dedication and with the help of consultants, Consultants, and service providers who also have been committed to providing quality products at competitive prices. We expect to continue this tradition.

While pursuing this RFP process, the Town reserves the right to award contracts to Proposers 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 Consultant, including officers, principals, senior management, and supervisors as well as the staff identified in the Response.

2.2 Submission Requirements

Sealed submittals including one (1) original, ten (10) bound paper copies of the submittal, and one (1) readable/reproducible flash drive completely duplicating the original proposal of the submittals must be received **no later** than **3:00 PM EST** on **March 10, 2023** and be clearly marked on the outside, “**RFP No. 22-05 DESIGN SERVICES FOR 16-ACRE LEGACY PARK AND MUNICIPAL COMPLEX,**” 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 **3:00 PM EST** on **March 10, 2023**, at which time their receipt will be publicly documented by the Town Clerk or her designee(s).

Sealed Qualification Packages will be received at:

Town of Cutler Bay

10720 Caribbean Blvd., Suite 105

Cutler Bay, FL 33189

2.3 Requests for Information and Clarification

All requests for information and/or clarification shall be addressed during the Non-Mandatory RFP virtual meeting on Wednesday, February 1, 2023 at 2:00 PM.

2.4 Submission Requirements / Criteria for Selection

Each consultant shall submit one (1) original and ten (10) bound photocopies of the response package and one (1) readable/reproducible flash drive. Paper size should be 8.5 in. x 11 in., printed on only one side of the paper, single or larger spacing, font size not less than 11. The sections shall follow the order given below and no material other than that listed in this Section should be included in the Response.

Your proposal shall include, at a minimum, the following information:

General Firm Information

- General Information about your firm such as size, location(s), etc.
- Dollar volume of business per year broken out by sector.
- List and describe the status of any pending litigation or arbitration.

Table of Contents

Table of contents identifying the sections and page numbers.

Specific Firm Experience

- Five (5) examples of your Firm’s previous projects providing services similar to those identified in the scope of services herein over the last ten (10) years. For each project listed in this section, the following shall be included:
 - Project name, location, description, and purpose.
 - Project budget and final cost.
 - Cost savings.
 - Scope of services provided.
 - Contact name, phone number and e-mail address for each client.
- Provide examples of your firm’s approach to interacting with the State of Florida’s various governmental agencies for zoning, permitting, etc., and how this approach ensures that authorities having jurisdiction do not delay the project schedule.
- Identify and provide qualifications for all sub-consultants that will be part of your team. Also note previous relevant projects on which your firm has worked with these sub-consultants.

Project Approach

- Describe how your Firm currently manages project organization; manages schedule and budget; develops design; public relations; incorporation of public feedback; etc.
- Demonstrate your ability to lead a collaborative design process with value-based design. Provide specific examples of projects that you have successfully delivered within the pre-established Owner budget constraints.
- Demonstrate your understanding and experience of the design/preconstruction process including master site planning, programming, schematic design, design development, construction documentation, regulatory requirements, value engineering, budgeting, equipment planning, and the designer’s role in the GMP construction delivery process.
- Provide examples of your Project Approach which demonstrates your design strategy and organizational/personnel plans that lead to a successful completion of projects.
- Provide examples of projects where you may have implemented an alternative project delivery strategy that fast-tracked a project schedule when compared to a traditional design-bid-build schedule. Specifically, how the design process can be managed for speed-to-market and elaborate on how your firm would meet or exceed schedule expectations.

Design Concept

- Provide a thorough explanation of the approach planned for this project along with a design concept, and a project schedule.
- Provide narrative describing intentions and actions of resilient/sustainable elements that would be considered for this project.
- Describe how the project will align with the Town’s Green Master Plan. <https://www.cutlerbay-fl.gov/community/page/legacy-park-and-municipal-complex-planning>

Qualification of Project Team

- Proposed organization chart identifying key professionals, their area(s) of responsibility and extent of their availability.
- Provide resumes for staff members that are proposed as team members for the services described herein.

Additional Information

- Provide any additional information, relevant to this project type, that you believe makes your firm a unique and ideal team member for the town.

Oral Presentation

- Each short-listed Firm will participate in a twenty (20)-minute oral presentation followed by up to a ten (10)-minute questions-and-answer session on Wednesday, March 15, 2023 at 5:00 PM before the Town Council.
- The oral presentation must only include staff that will be actively working on the project.

Fee Proposal

- Provide a lump sum fee for your services for this project. See Attachment “C” for the required format of the fee proposal.
- Provide a listing of hourly rates for the roles proposed for this project.
- Provide a not to exceed amount for reimbursable expenses.

Attachments

- Attachment “A”: 16-Acres: Legacy Park and Municipal Complex Executive Summary
- Attachment “B”: Scope of Services
- Attachment “C”: Fee Schedule
- Attachment “D”: *Signed and sealed* Single Execution Affidavit.
- Attachment “E”: Professional Services Agreement – includes Resume and Certificates

Note: Attachment “C”, Fee Schedule, and Attachment “D”, Single Execution Affidavit, must be completed and submitted as part of the Proposer's submission.

Proofs of Authorization

Proof to transact business in the State from the Florida Secretary of State, from prime as well as supporting firms. Proof of supporting certificates and Insurance Certificates.

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2.5 RFP Evaluation Scoring Criteria

The Town Council will evaluate the responses based on the criteria and point value listed below.

Criteria		Maximum Points
1.	<p><u>General Firm Information</u> General Information about your firm such as size, location(s), etc. Dollar volume of business per year broken out by sector. List and describe the status of any pending litigation or arbitration.</p>	5
2.	<p><u>Specific Firm Experience</u> Provide examples of your Firm’s, and for all sub-consultants, previous projects providing services similar to those identified in the scope of services. Provide examples of your firm’s approach to interacting with the State of Florida’s various governmental agencies for zoning, permitting, etc., and how this approach ensures that authorities having jurisdiction do not delay the project schedule.</p>	5
3.	<p><u>Qualification of Project Team</u> Resumes and an Organization chart of the proposed team members which identifies their area(s) of responsibility and extent of their availability.</p>	10
4.	<p><u>Project Approach</u> Describe how your Firm currently manages project organization; manages schedule and budget; develops design; public relations; incorporation of public feedback; etc. Demonstrate your ability to lead a collaborative design process with value-based design. Provide specific examples of projects that you have successfully delivered within the pre-established Owner budget constraints.</p>	10
5.	<p><u>Design Concept</u> Provide a thorough explanation of the approach planned for this project along with a design concept, and a project schedule. Provide narrative describing intentions and actions of resilient/sustainable elements that would be considered for this project. Describe how the project will align with the Town’s Green Master Plan.</p>	35
6.	<p><u>Interview</u> Each short-listed Firm will participate in a twenty (20)-minute oral presentation followed by up to a ten (10)-minute questions-and-answer session before the Town Council.</p>	10
7.	<p><u>Fee Proposal</u> Review of Attachment “C,” list of hourly rates, and reimbursables.</p>	25
TOTAL		100

2.6 Schedule

DESCRIPTION	DATE*	TIME* (EST)
RFQ Short List Announced & RFP Provided to Short List Firms	01/27/2023	3:00 PM
Non-Mandatory RFP Virtual Meeting – Short Listed Firms	02/01/2023	2:00 PM
RFP DUE (Proposals/Design Package)	3/10/2023	3:00 PM
Oral Presentation – Short Listed Firms	3/15/2023	5:00PM – 8:00PM
Town Council Announcement of Selected Firm - Cone of Silence Ends	3/22/2023	6:00 PM
Selected Firm Kick-Off Meeting	TBA	TBA

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

2.7 Eligibility

Each Firm shall meet all legal, technical, and professional requirements for providing the requested Services, and shall furnish additional information as requested by the Town. This includes, but is not limited to, information that indicates financial resources as well as ability to provide and maintain the system and/or services herein. The Town reserves the right to make investigations of any Firm's qualifications or any of its agents, as it deems appropriate.

2.8 Presentation Costs

The Town shall not be liable for any costs, fees, or expenses incurred by any Firm in responding to this RFP, subsequent inquiries or presentations relating to its response. The Town may decide to provide the short-listed firms with a stipend of \$2,500.00 for submission of responsive proposals to RFP No. 22-05.

2.9 Addendums

If the Town finds it necessary to add to or amend this document prior to the submittal deadline, the Town will issue written addenda/addendum. Each Firm must acknowledge receipt of each addendum by signing the acknowledgement and providing it with its Response.

2.10 Certification

The signer of the Proposal Package (to this RFP) must declare by signing Attachment "D" that the person(s), firm (s) and parties identified in the package are interested in, and available for, providing the Services; that the package declares without collusion with any other person(s), firm(s) and parties; that the package is fair in all respects and is made in good faith without fraud; and that the signer of the cover letter has full authority to bind the person(s), firm(s) and parties identified.

2.11 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.

2.12 Retention of Responses

The Town reserves the right to retain all Proposal Packages submitted and to use any ideas contained in any Response, regardless of whether that Proposer is selected.

2.13 Final Selection

The Town Council shall select the Firm who will best serve the interests of the Town and whose Proposals are considered by the Town to be the lowest, most responsive, and responsible Respondent whose bid meets the requirements and criteria set forth in this RFP.

2.14 Process of Selection and Negotiation

The Town Council will rank the short-listed Firms based upon the RFP and oral presentations. If contract negotiations fail with any Firm, 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. Any award shall be subject to execution of an agreement in form and substance approved by the Town Attorney

2.15 Irregularities and Reservation of Rights

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 provided in this RFP will not be considered.

The Town reserves the right to accept or reject any or all Proposals, 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 Consultant, including officers, principals, senior management and supervisors, as well as the staff identified in the Proposal.

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SECTION 3: OTHER CONDITIONS

3.1 Term Of Engagement

The term of agreement will be negotiated at the time of contract award. The Town or the selected Firm may terminate the agreement upon thirty (30) days' notice without giving any reason.

3.2 Permits, Taxes, Licenses

The selected Firm 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 would apply to this contract.

3.3 Laws, Ordinances

The selected Firm shall observe and comply with all federal, state, and local laws, Ordinances, rules, regulations, and professional standards that would apply to this contract.

3.4 Insurance

Prior to execution of an agreement with the Town, the selected Firm shall provide certificates evidencing insurance coverage as required hereunder. Companies authorized to do business under the laws of the State of Florida shall issue all insurance policies. The Certificates shall clearly indicate that the Firm 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's representative. Compliance with the foregoing requirements shall not relieve the Firm of its liability and obligations under the agreement. The selected Firm shall maintain, during the term of the agreement, the following:

- Standard Professional Liability insurance in the minimum amount of two-million-dollars (\$2,000,000.00) per occurrence.
- Commercial general liability, including contractual liability insurance in the amount of two-million-dollars (\$2,000,000.00) 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 Firm or by anyone directly employed by or contracting with them.
- Automobile liability insurance in the minimum amount of five-hundred-thousand-dollars (\$500,000.00) 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 Firm or by anyone directly or indirectly employed by them.
- Professional Liability Errors and Omissions Insurance in an amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence, single limit.
- As law requires adequate Worker's Compensation Insurance and Employer's Liability insurance in at least such amounts as for all of its employees per Florida Statute 440.02.
- The selected Firm shall also maintain other required insurance coverage specific to the services to be provided.

3.5 Negotiations

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

[END OF SECTION]

ATTACHMENT “A”
16-ACRES: LEGACY PARK AND MUNICIPAL COMPLEX EXECUTIVE SUMMARY

In order to get a better understanding of the project and to serve as a guide to develop the preliminary conceptual design, the Town prepared the 16 Acres: Legacy Park and Municipal Complex Executive Summary, which provides background on this project, history of the community, extensive feedback collected from the residents and more. You will find all the information in the following links to the Town’s website.

Town’s History: <https://www.cutlerbay-fl.gov/community/page/town-history>

16 Acres: Legacy Park and Municipal Complex Executive Summary:
https://www.cutlerbayfl.gov/sites/default/files/fileattachments/community/page/9746/town_of_cutler_bay_legacy_park_and_municipal_complex_executive_summary.pdf

Documents referenced in the Executive Summary (Attachment A) will be posted to this page:
<https://www.cutlerbay-fl.gov/community/page/legacy-park-and-municipal-complex-planning>

Pre-RFQ Meeting - December 14, 2022 (2 PM ET) Zoom links/information:

a. Register in advance for this webinar:
https://us06web.zoom.us/webinar/register/WN_QZpJybtnSLi0JYDUfWwvfQ

b. Additional Zoom Room Details, if needed:

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join. <https://us06web.zoom.us/j/83370135696>

Description: Pre-RFQ 22-05 Meeting - Design Services for 16-Acre Legacy Park and Municipal Complex

Or One tap mobile:

+17866351003,,83370135696# US (Miami)

Or join by phone:

Dial(for higher quality, dial a number based on your current location):

US: +1 786 635 1003

Webinar ID: 833 7013 5696

International numbers available: <https://us06web.zoom.us/j/83370135696>

ATTACHMENT “B”

SCOPE OF SERVICES

The project design shall be provided by a multi-disciplined team of Architectural, Design and Engineering professionals and shall provide design services, engineering services, cost estimating, cost management, value analysis, value engineering, cost tradeoff pricing, and peer review. The design team will use the “16 Acres: Legacy Park and Municipal Complex Executive Summary” (Attachment “A”) as a guide to develop the site design and to incorporate some of the public feedback received included in the summary. Design shall be completed in accordance with the latest editions of all applicable Federal, State, County and Town codes/regulations.

To further assist in developing a proposal relative to your potential responsibilities as an A/E team member, the breakdown of responsibilities may include, but are not limited to the following:

1. The Architect will function as the lead consultant for the A/E Team. The Architect will be responsible for leading and coordinating the activities of all their sub-consultants and confirming that the document sets are fully coordinated.
2. As part of this proposal, the Architect shall include the following services as part of their scope:
 - Master Site Planning
 - Architectural & Interior Design Services
 - Civil Engineering
 - Mechanical, Electrical, Plumbing Engineering
 - Fire Protection
 - Structural Engineering
 - Parking Garage Consultant
 - Pool/Aquatic Consultant
 - LEED or Equivalent Consultant
 - Low Voltage Design
 - Security
 - Equipment Planning
 - Furniture, Fixtures, & Equipment Design Services
 - Signage (Interior and Exterior)
 - Vertical Transportation
 - Landscape Design Services
 - Acoustical & Vibration Consultant
 - Wind-Wake Engineering Consultant
 - Traffic Consultant
 - Other Specialty Design Services as required

The following services can be assumed as contracted directly with the Town and will not be contracted with A/E Services:

- Geotechnical Services
 - Commissioning Agents (i.e. – MEP, building enclosure, etc.)
3. The Architect shall be responsible for reviewing all code requirements as well as drawing submissions to the Florida State Department of Health and various governmental agencies for zoning, permitting, etc. When necessary, this will be in conjunction with the Civil Engineer’s efforts.
 4. The Architect and Engineers will be required to provide an early Building Basis of Design (BOD) including MEP systems for evaluation by the Town and their Owner’s Representative (Stantec) to ensure these standards are maintained throughout the design.
 5. The Architect shall be responsible for evaluating the existing site and surrounding areas as they relate to the project.
 6. With input from the Town, Owner’s Representative (Stantec), and the Architect shall lead the design process through the various stages (i.e. – master planning/massing of the site, programming, schematic design, design development, construction documents) and issue packages as required for pricing,

- permitting and ultimately construction.
7. The Architect shall be responsible for incorporating all equipment requirements into their design. This includes but is not limited to the review of equipment technical specifications during the design process, development of an Owner/Contractor/Vendor equipment responsibilities matrix and the placement of all equipment on the drawings.
 8. The Architect shall participate in a design and construction process that supports a speed-to-market effort by the project team. This includes the Town's effort of early on-boarding of the Construction Manager and their Subcontracts as design assist partners.
 9. The Architect will be responsible to design the project to meet the Owner's project budget. The Architect will support ongoing value engineering by the Construction Manager and Project Manager throughout the design process.
 10. The Construction Document Phase shall realize the development of final working drawings. During this phase, the A/E will work in conjunction with the project team in an ongoing effort to ensure these final drawings are consistent with the scope of work approved by the Owner and are covered under the Guaranteed Maximum Price.
 11. Architectural services during the construction period can be assumed as construction administration. The Architect's primary responsibilities during this phase will include:
 - Active participation in the effort to implement design documents.
 - Timely processing of RFI's, Samples, Specifications, and Submittals.
 - Attendance at progress and coordination meetings as requested by the Owner or otherwise required to maintain construction progress.
 - Regular jobsite inspections and reporting.

[SPACE LEFT INTENTIONALLY BLANK]

ATTACHMENT “C”

FEE SCHEDULE

Table B.1: Fee Structure by Design Phase

Total Lump Sum Fee: \$		
<i>Fee Broken Down by Design Phase</i>	<i>Resource-Hours</i>	<i>Phase Total</i>
Master Site Planning		
Programming		
Schematic Design		
Design Development		
Construction Documentation		
Bidding		
Construction Administration		
Closeout		
Total:		

Table B.2: Fee Structure by Design Discipline

Total Lump Sum Fee: \$		
<i>Fee Broken Down by Design Discipline</i>	<i>Resource-Hours</i>	<i>Discipline Total</i>
Architectural Services		
Civil Design Services		
MEP Design Services		
Structural Engineering Services		
Parking Garage Design Services		
Low Voltage / I.T. / Security Design Services		
Aquatic Design Services		
Traffic Design Services		
Equipment Planning		
Furniture Design Services		
Signage Design (Interior & Exterior)		
Vertical Transportation		
LEED or Equivalent Consultant		
Landscape Design Services		
Acoustical and Vibration Consultant		
Wind-Wake Engineering Consultant		
Specialty Design Services		
Total:		

ATTACHMENT “D”

SINGLE EXECUTION AFFIDAVITS

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

THIS FORM COMBINES SEVERAL AFFIDAVIT STATEMENTS TO BE SWORN TO BY THE CONSULTANT AND NOTARIZED BELOW. IN THE EVENT THE CONSULTANT CANNOT SWEAR TO ANY OF THESE AFFIDAVIT STATEMENTS, THE CONSULTANT IS DEEMED TO BE NON-RESPONSIBLE AND IS NOT ELIGIBLE TO SUBMIT A PROPOSAL/BID OR PERFORM THE SERVICES.

THESE SINGLE EXECUTION AFFIDAVITS ARE SUBMITTED TO THE TOWN OF CUTLER BAY AND ARE STATEMENTS MADE:

By: _____

For (Name of Proposing or Bidding Entity): _____

Whose business address is: _____

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

(if the entity does not have an FEIN, include the Social Security Number of the individual signing this sworn statement. SS#: _____)

Americans with Disabilities Act Compliance Affidavit

The above named firm, corporation or organization is in compliance with and agrees to continue to comply with, and assure that any subconsultant, or third party Consultant under this project complies with all applicable requirements of the laws listed below including, but not limited to, those provisions pertaining to employment, provision of programs and services, transportation, communications, access to facilities, renovations, and new construction.

- The American with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat 327, 42 USC 1210112213 and 47 USC Sections 225 and 661 including Title I, Employment; Title II, Public Services; Title III, Public Accommodations and Services Operated by Private entities; Title IV, Telecommunications; and Title V, Miscellaneous Provisions.
- The Florida Americans with Disabilities Accessibility Implementation Act of 1993, Section 553.501-553.513, Florida Statutes:
- The Rehabilitation Act of 1973, 229 USC Section 794;
- The Federal Transit Act, as amended 49 USC Section 1612;
- The Fair Housing Act as amended 42 USC Section 3601-3631.

Consultant Initials

Public Entity Crimes Affidavit

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 an agency or political subdivision of any other state or of the United States, including but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentations.

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 of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

I understand that an “affiliate” as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

1. A predecessor or successor of a person convicted of a public entity crime; or

2. 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 a 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.

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 of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid 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, and partners, shareholders, employees, members, and agents who are active in management of an entity.

Based on information and belief, the statement, which I have marked below, is true in relations to the entity submitting this sworn statement.

(INDICATE WHICH STATEMENT APPLIES.)

- Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

- The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida , Division of Administrative Hearings and the final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list (attach a copy of the final order).

I understand that the submission of this form to the contracting officer for the public entity identified in paragraph 1 above is for that public entity only and that this form is valid through December 31 of the calendar year in which it is filed. I also understand that I am required to inform the public entity prior to entering into a contract in excess of the threshold amount provided in Section 287.017, Florida Statutes for category two of any change in the information contained in this form.

Consultant Initials

No Conflict of Interest or Contingent Fee Affidavit

1. Consultant warrants that neither it nor any principal, employee, agent, representative nor family member has paid or will pay any fee or consideration that is contingent on the award or execution of a contract arising out of this solicitation.
2. Consultant also warrants that neither it nor any principal, employee, agent, representative nor family member has procured or attempted to procure this contract in violation of any of the provisions of the Miami-Dade County conflict of interest or code of ethics ordinances.
3. Further, Consultant acknowledges that any violation of these warrants will result in the termination of the contract and forfeiture of funds paid or to be paid to the Consultant should the Consultant be selected for the performance of this contract.

Consultant Initials

Anti-Kickback Affidavit

No portion of the sum herein bid will be paid to any employees of the Town of Cutler Bay, its elected officials, and/or its design consultants, as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

Consultant Initials

[SPACE LEFT INTENTIONALLY BLANK]

Business Entity Affidavit

Consultant hereby recognizes and certifies that no elected official, board member, or employee of the Town of Cutler Bay (the "Town") shall have a financial interest directly or indirectly in this transaction or any compensation to be paid under or through this transaction, and further, that no Town employee, nor any elected or appointed officer (including Town board members) of the Town, nor any spouse, parent or child of such employee or elected or appointed officer of the Town, may be a partner, officer, director or proprietor of Consultant or Vendor, and further, that no such Town employee or elected or appointed officer, or the spouse, parent or child of any of them, alone or in combination, may have a material interest in the Vendor or Consultant. Material interest means direct or indirect ownership of more than 5% of the total assets or capital stock of the Consultant. Any exception to these above-described restrictions must be expressly provided by applicable law or ordinance and be confirmed in writing by Town. Further, Consultant recognizes that with respect to this transaction or bid, if any Consultant violates or is a party to a violation of the ethics ordinances or rules of the Town, the provisions of Miami-Dade County Code Section 2-11.1, as applicable to Town, or the provisions of Chapter 112, part III, Fla. Stat., the Code of Ethics for Public Officers and Employees, such Consultant may be disqualified from furnishing the goods or services for which the bid or proposal is submitted and may be further disqualified from submitting any future bids or proposals for goods or services to Town.

Consultant Initials

Anti-Collusion Affidavit

1. Consultant has personal knowledge of the matters set forth in its Proposal/Bid and is fully informed respecting the preparation and contents of the attached Proposal/Bid and all pertinent circumstances respecting the Proposal/Bid;
2. The Proposal/Bid is genuine and is not a collusive or sham Proposal/Bid; and
3. Neither the Consultant nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including Affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Consultant, firm, or person to submit a collusive or sham Proposal/Bid, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Consultant, firm, or person to fix the price or prices in the attached Proposal/Bid or of any other Consultant, or to fix any overhead, profit, or cost element of the Proposal/Bid price or the Proposal/Bid price of any other Consultant, 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 Contract.

Consultant Initials

Scrutinized Company Certification

1. Consultant certifies that it and its subconsultants are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Town may immediately terminate the Agreement that may result from this RFP at its sole option if the Consultant or its subconsultants are found to have submitted a false certification; or if the Consultant, or its subconsultants are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

2. If the Agreement that may result from this RFP is for more than one million dollars, the Consultant certifies that it and its subconsultants are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. pursuant to Section 287.135, F.S., the Town may immediately terminate the Agreement that may result from this RFP at its sole option if the Consultant, its affiliates, or its subconsultants are found to have submitted a false certification; or if the Consultant, its affiliates, or its subconsultants are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
3. The Consultant agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under the Agreement that may result from this RFP. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

Consultant Initials

Drug-Free Workplace Certification

The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies that it does:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.
7. As the person authorized to sign this statement, I certify that this firm complies fully with the above requirements.

Consultant Initials

E-VERIFY AFFIDAVIT

In accordance with Section 448.095, Florida Statutes, the Town requires all consultants doing business with the Town to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Town will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity’s participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.

Consultant Initials

**Sworn Signature of Proposing Entity Representative and Notarization
for all above Affidavits follows on the next page.**

[SEE NEXT PAGE]

In the presence of:

Signed, sealed and delivered by:

Witness 1 Print Name: _____

Print Name: _____

Title: _____

Witness 2 Print Name: _____

ACKNOWLEDGMENT

State of Florida
County of _____

On this _____ day of _____, 2023, before me the undersigned, personally appeared _____, 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 (Print, Stamp, or Type as
Commissioned)

Personally known to me; or
Produced identification (Type of Identification: _____)
Did take an oath; or
Did not take an oath

[END OF SECTION]

ATTACHMENT “E”

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE TOWN OF CUTLER BAY
AND
NAME OF ENTITY**

THIS AGREEMENT (this “Agreement”) is made this ____ day of _____ 2023 (“Effective Date”) by and between the Town of Cutler Bay, a Florida municipal corporation, (“Town”), and **NAME OF ENTITY**, a Florida [type of entity], (“Consultant”).

WHEREAS, the Consultant will provide design services for the 16-acre legacy park and municipal complex, all as further set forth in the Scope of Services attached hereto as Exhibit “A” (“Services”); and

WHEREAS, the Consultant and Town, through mutual negotiation, have agreed upon the fees for the Services, attached hereto as Exhibit “B”; and

WHEREAS, the Town desires to engage the Consultant to perform the Services as specified in this Agreement.

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

1. Scope of Services

- 1.1. Consultant shall provide the Services set forth in the in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference (the “Services”).
- 1.2. Consultant shall furnish all reports, documents, and information obtained pursuant to this Agreement and recommendations during the term of this Agreement to the Town.

2. Compensation and Payment

- 2.1. Compensation for Services provided by Consultant shall be in accordance with the Fee Schedule attached hereto as Exhibit “B.”
- 2.2. Consultant shall deliver an invoice to the Town no more often than once per month detailing Services completed and the amount due to Consultant under this Agreement. Fees shall be paid in arrears each month, pursuant to Consultant’s invoice, which shall be based upon the percentage of work completed for each task invoiced. The Town shall pay the Consultant in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the Town Manager.

3. Term

- 3.1. This Agreement shall become effective upon the Effective Date and shall continue for a term to be negotiated at the time of contract, unless earlier terminated in accordance with Paragraph 4. At its sole discretion, the Town shall have an option to renew this Agreement upon the same terms and conditions for one (1) additional one (1) year term (the “Renewal Option”). This Renewal Option may be exercised at the sole discretion of the Town Manager. Such Renewal Option(s) shall be effective upon written notice from the Town Manager to the Consultant no later than thirty (30) days prior to the date of termination of the initial term or the applicable Renewal Option term.

- 3.2. The Consultant agrees that time is of the essence and the Consultant shall perform and complete the Work within the time frames as agreed upon by the Consultant and the Town Manager or his designee.

4. Termination

- 4.1. The Town Manager, without cause, may terminate this Agreement upon thirty (30) calendar days written notice, or immediately with cause.
- 4.2. Upon receipt of the Town's written Notice of Termination, Consultant shall immediately stop work on the project unless directed otherwise by the Town Manager.
- 4.3. In the event of termination by the Town, the Consultant shall be paid for all work accepted by the Town Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 4.4.
- 4.4. The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services and the project to the Town, in a hard copy and electronic format within fourteen (14) days from the date of the written Notice of Termination or the date of expiration of this Agreement.

5. Town's Responsibilities

- 5.1. Town shall make available any maps, plans, existing studies, reports, staff and representatives, and other data pertinent to the Services and in possession of the Town, and provide criteria requested by Consultant to assist Consultant in performing the Services.
- 5.2. Upon Consultant's request, Town shall reasonably cooperate in arranging access to public information that may be required for Consultant to perform the Services.

6. Subconsultants

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

7. Consultant's Responsibilities; Representations and Warranties

- 7.1. The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily provided by a consultant under similar circumstances. If at any time during the term of this Agreement or within five (5) years from the completion of this Agreement, it is determined that the Consultant's Work or Services are incorrect, not properly rendered, defective, or fail to conform to Town requests, the Consultant shall at Consultant's sole expense, immediately correct its Work or Services.
- 7.2. The Consultant hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services for Town as an independent contractor of the Town. Consultant further warrants and represents that it has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional and first-class manner.

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

8. Consultant's Employees

8.1. The Consultant shall at all times have a competent English-speaking supervisor who thoroughly understands the Work, who shall, as the Consultant's agent, supervise, direct and otherwise conduct the Work. Consultant's employees shall serve the public in a courteous, helpful, and impartial manner.

8.2. Consultant's employees shall wear a clean uniform and/or company identification that provides identification of the Consultant's company and/or the name of the employee.

8.3. Consultant shall, upon receipt of a written request from the Town, immediately exclude any employee of Consultant from providing Work under this Agreement.

8.4. The Work contemplated in this Agreement is on public property, accordingly no alcoholic beverages shall be allowed.

8.5. All references in this Agreement to the Consultant shall include Consultant's employees or sub-Consultant, wherever applicable.

9. Indemnification

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

9.2. Nothing herein is intended to serve as a waiver of sovereign immunity by the Town nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Town is subject to section 768.28, Florida Statutes, as may be amended from time to time.

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

10. Insurance

10.1. The Consultant 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 Consultant's insurance and shall not contribute to the Consultant's insurance.

The insurance coverages shall include a minimum of:

10.1.1 Commercial General Liability coverage with limits of liability of not less than a

\$2,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Consultant. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

10.1.2 Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$2,000,000.00 each accident. No employee, subcontractor or agent of the Consultant shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.

10.1.3 Business Automobile Liability with minimum limits of \$500,000 per occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

10.1.4 Professional Liability Errors and Omissions Insurance in an amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence, single limit.

10.2. Certificate of Insurance

Consultant 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 Consultant 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.

10.3. Additional Insured

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

10.4. Loss Payee

The Town is to be specifically named as a loss payee under the Consultant’s Professional Insurance policy so that the Town will be a third party beneficiary entitled to receive all money payable under the relevant policy for any claims, damages, or losses in connection with, related to, or arising from Consultant’s Services or performance pursuant to this Agreement.

10.5. Deductibles

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

10.6. Provisions

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

11. Ownership and Access to Records; Audits

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

11.2. During the term of this Agreement and for five (5) years from the date of termination the Consultant shall allow Town representatives access, during reasonable business hours, to Consultant’s and, if applicable, sub-Consultant’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 Consultant was paid for services not performed, upon receipt of written demand by the Town, the Consultant shall remit such payments to the Town.

12. Public Records

12.1. Consultant agrees to keep and maintain public records in Consultant’s possession or control in connection with Consultant’s performance under this Agreement. The Town Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement. Consultant additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Consultant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.

12.2. Upon request from the Town’s custodian of public records, Consultant shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

12.3. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.

- 12.4. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Consultant shall be delivered by the Consultant to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Consultant shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Consultant shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 12.5. Any compensation due to Consultant shall be withheld until all records are received as provided herein.
- 12.6. Consultant's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.
- 12.7. **Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.** IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: MAURICIO MELINU, TOWN CLERK, 10720 CARIBBEAN BOULEVARD, SUITE 105, CUTLER BAY, FL 33189, (305) 234-4262, MMELINU@CUTLERBAY-FL.GOV

13. Independent Contractor

- 13.1. The Consultant and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Town with respect to all of the acts and services performed by and under the terms of this Agreement. Accordingly, Consultant shall not attain, nor be entitled to, any rights or benefits of the Town, nor any rights generally afforded classified or unclassified employees.
- 13.2. Consultant further understands that Florida Worker's Compensation benefits available to employees of the Town are not available to Consultant and agrees to provide worker's compensation insurance for any employee or agent of Consultant rendering services to the Town under this Agreement.
- 13.3. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.
- 13.4. All employees and sub-Consultants of the Consultant shall be considered to be, at all times, the sole employees or sub-Consultants of Consultant, under its sole discretion and not an employee, Consultant or agent of the Town.

14. Compliance with Laws

- 14.1. The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.
- 14.2. Consultant shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the Work and the conduct of all persons engaged in or the materials or methods used by him, on the Work. Consultant 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. At all times during the Term of this Agreement, the Consultant

shall secure and maintain all permits, fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this Agreement for any reason, Consultant shall transfer such permits, if any, and if allowed by law, to the Town.

15. Prohibition of Contingency Fees

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

16. Public Entity Crimes Affidavit

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

17. Nondiscrimination

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

18. Waiver

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

19. Nonassignability

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

20. Severability

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

21. Survival of Provisions

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

22. Counterparts

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

23. Entire Agreement/Modification/Amendment

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

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

24. Governing Law and Venue

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

25. Attorneys' Fees and Waiver of Jury Trial

- 25.1.** In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 25.2.** IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

26. Conflict of Interest

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

27. Protection of Property and Public Safety

- 27.1.** The Consultant shall continuously maintain adequate protection of all Work from damage and shall protect public and private property from injury or loss arising in connection with this Agreement.
- 27.2.** The Consultant shall take all necessary precautions for the safety of employees or sub-contractors 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.

28. Accident Prevention and Regulations

Precautions shall be exercised at all times for the protection of persons and property. The Consultant and sub-Consultant 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 Consultant responsible for same.

29. Background Checks

The Consultant will be responsible for maintaining current background checks on all employees and sub-Consultant employees involved in the performance of the Services. Background checks must be performed prior to the performance of any Services 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.

30. Notices

Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

31. Agreement Documents

31.1. The following documents shall, by this reference, be incorporated and made a part of this Agreement:

- 31.1.1. Agreement
- 31.1.2. Exhibit A: Scope of Work
- 31.1.3. Exhibit B: Fee Schedule
- 31.1.4. Exhibit C: Resume and Certifications
- 31.1.5. Exhibit D: Proof of Insurance
- 31.1.6. Exhibit E: Single Execution Affidavit
 - 31.1.6.1. Americans with Disabilities Act Affidavit
 - 31.1.6.2. Public Entity Crimes Affidavit
 - 31.1.6.3. No Conflict of Interest or Contingent Fee Affidavit
 - 31.1.6.4. Anti-Kickback Affidavit
 - 31.1.6.5. Business Entity Affidavit
 - 31.1.6.6. Anti-Collusion Affidavit
 - 31.1.6.7. Scrutinized Company Certification
 - 31.1.6.8. Drug-Free Workplace Certification
 - 31.1.6.9. E-Verify Affidavit

32. American Rescue Plan Provisions: Mandated Federal Agreement Conditions

32.1. In connection with the performance of this Agreement, Contractor acknowledges that compensation for the Work performed under this Agreement shall be fully or partially funded using the Coronavirus State and Local Fiscal Recovery Funds allocated to the Town pursuant to the American Rescue Plan Act. As such, Contractor shall comply with all laws, rules, regulations, policies, and guidelines (including any subsequent amendments to such laws, regulations, policies, and guidelines) required by the American Rescue Plan Act, including, but not limited to the following documents and guidelines, which are incorporated herein and made a part of this Agreement:

- 32.1.1. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), as applicable;
- 32.1.2. The U.S. Department of the Treasury’s Final Rule governing ARPA;
- 32.1.3. U.S. Department of the Treasury Coronavirus State and Local Fiscal Recovery Funds Award Terms and Conditions (Assistance Listing Number 21.019);
- 32.1.4. The U.S. Department of the Treasury’s Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions;
- 32.1.5. American Rescue Plan Act Coronavirus Local Fiscal Recovery Fund Agreement; and
- 32.1.6. The U.S. Department of the Treasury’s ARPA Compliance and Reporting Guidance.

A copy of the above-referenced documents are available for inspection by the Contractor at the Office of the Town Clerk and at the following Town link:

https://www.cutlerbay-fl.gov/sites/default/files/fileattachments/community/page/9955/arpa_exhibits_j-n.pdf

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- 32.2.** *Title VI Requirements.* Contractor acknowledges that the Town has certified or will certify compliance with Title VI of the Civil Rights Act of 1964, in the form attached hereto as Exhibit “L,” to the U.S. Department of the Treasury. Towards that end, Contractor shall ensure that performance of work in connection with this Agreement follows the certifications contained in Exhibit “L,” and shall also adhere to the following provisions:
- 32.2.1.** The Contractor and its subcontractors, successors, transferees, and assignees shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement.
- 32.2.2.** Pursuant to 44 C.F.R. §§ 7 and 16, and 44 C.F.R. § 206.11, and that the Contractor shall undertake an active program of nondiscrimination in its administration of the Work under this Agreement.
- 32.3.** *Americans with Disabilities Act Requirements.* The Contractor agrees to comply with the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. §§ 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and Local government services, and telecommunications. Additionally, Contractor agrees to comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 3601), which prohibits discrimination against individuals on the basis of discrimination under any program or activity under this Agreement.
- 32.4.** *Age Discrimination Act of 1975.* Contractor shall comply with the requirements of 42 U.S.C. §§ 6101 et seq., as amended, and the Treasury’s implementing regulations (31 CFR Part 23), which prohibits the discrimination on the basis of age in programs or activities under this Agreement.
- 32.5.** *Protections for Whistleblowers.*
- 32.5.1.** In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- 32.5.2.** The list of persons and entities referenced in the paragraph above includes the following:
- 32.5.2.1.** A Member of Congress or a representative of a committee of Congress.
- 32.5.2.2.** An Inspector General
- 32.5.2.3.** The Government Accountability Office.
- 32.5.2.4.** A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- 32.5.2.5.** An authorized official of the Department of Justice or other law enforcement agency.
- 32.5.2.6.** A court or grand jury.
- 32.5.2.7.** A management official or other employee of the Contractor, subcontractor, the State of Florida, or the Town who has the responsibility to investigate, discover, or address misconduct.

- 32.5.3.** The Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
- 32.6.** Compliance with Immigration and Nationality Act (INA). Contractor hereby certifies that it does not knowingly employ unauthorized alien workers in violation of the employment provisions contained in 8 USC Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act (“INA”)].
- 32.7.** Seat Belts Required. Pursuant to Executive Order 13043, 62 FR 19217, Contractor shall adopt and enforce policies or programs that require employees to use seat belts while operating or traveling on vehicles owned, rented, or personally owned by the Contractor and its employees while performing the Work.
- 32.8.** Texting While Driving Ban. Pursuant to Executive Order 13513, 74 FR 51225, Contractor shall adopt and enforce policies that ban text messaging while driving and workplace safety policies designed to decrease accidents caused by distracted drivers.
- 32.9.** Publication. Contractor shall obtain approval from the Town in writing prior to issuing any publications in connection with this Agreement. If approved by the Town, the Contractor shall include the following language in any and all publications issued:
“This Project is [being funded/was supported] in part by federal award number (FAIN) [Insert Project FAIN] awarded to the Town of Cutler Bay, Florida, by the U.S. Department of the Treasury.”
- 32.10.** Reporting Conflict of Interests. Contractor agrees to disclose in writing to the Town, U.S. Department of the Treasury, and the State of Florida, as appropriate, any potential conflicts of interest affecting the use of funds awarded under the American Rescue Plan Act in accordance with 2 CFR 200.112.
- 32.11. Compliance with Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200).** In accordance with the Final Rule and other guidelines provided in connection with the American Rescue Plan Act, Contractor shall be subject to the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR Part 200, including, but not limited to:
- 32.11.1. Equal Employment Opportunity Compliance.** During the performance of this Agreement, the Contractor agrees as follows:
- 32.11.1.1.** The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
- Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising;
 - layoff or termination;
 - rates of pay or other forms of compensation; and
 - selection for training, including apprenticeship
- 32.11.1.2.** The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- 32.11.1.3.** The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
 - The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the U.S. Secretary of Labor.
 - The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the U.S. Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the U.S. Secretary of Labor, or as otherwise provided by law.
 - The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the U.S. Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

32.11.2. Contract Work Hours and Safety Standards Act Compliance. During the performance of this Agreement, the Contractor shall comply with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 through 3708), including as follows:

- 32.11.2.1. *Overtime requirements.*** No Contractor or subcontractor contracting for any part of the Agreement Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 32.11.2.2. *Violation; liability for unpaid wages; liquidated damages.*** In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- 32.11.2.3. *Withholding for unpaid wages and liquidated damages.*** The Town shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- 32.11.2.4. *Subcontracts.*** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.
- 32.11.3. *Clean Air Act Compliance.*** During the performance of this Agreement, the Contractor shall comply with the provisions of Clean Air Act (42 U.S.C. § 7401 et seq., as amended) and specifically agrees as follows:
- 32.11.3.1.** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- 32.11.3.2.** The Contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Environmental Protection Agency Region 4 (Southeast) Office.
- 32.11.3.3.** The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance in connection with this Agreement.
- 32.11.4. *Federal Water Pollution Control Act Compliance.*** During the performance of this Agreement, the Contractor shall comply with the provisions of Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq., as amended) and specifically agrees as follows:
- 32.11.4.1.** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

- 32.11.4.2.** The Contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Environmental Protection Agency Region 4 (Southeast) Office
- 32.11.4.3.** The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance in connection with this Agreement.
- 32.11.5. *Debarment and Suspension Compliance.*** During the performance of this Agreement, the Contractor warrants that Contractor or its subcontractors are not debarred, suspended, or otherwise ineligible for contract awards under Executive Orders 12549 and 12689. Contractor shall comply with the following provisions:
- 32.11.5.1.** This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180, the U.S. Department of the Treasury’s implementing regulations at 31 CFR Part 19, and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- 32.11.5.2.** The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 32.11.5.3.** This certification is a material representation of fact relied upon by the Town. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 32.11.5.4.** The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of this Agreement. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.
- 32.11.5.5.** Contractor certifies that they:
- Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
 - Have not, within a five (5)-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 - Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local); and
 - Have not, within a five (5)-year period preceding this Agreement, had one or more public transactions (Federal, State or Local) terminated for cause or default. If the Contractor is unable to obtain and provide such certification, then the Contractor shall attach an explanation to this Agreement as to why not.
- 32.11.6. *Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352, as amended).*** During the performance of this Agreement, the Contractor and its subcontractors shall comply with the provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352, as amended). Specifically, Contractor represents and warrants as follows:
- 32.11.6.1.** No Funds received by the Contractor under this Agreement have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to

influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- 32.11.6.2.** If any monies, other than Funds received by Contractor under this Agreement, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- 32.11.6.3.** The Contractor shall require that this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all such sub-recipients shall certify and disclose accordingly.
- 32.11.6.4.** This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 32.11.7. *Copeland "Anti-Kickback" Act.*** During the performance of this Agreement, the Contractor and its subcontractors shall comply with the provisions of the Copeland "Anti-Kickback" Act as follows:
- 32.11.7.1.** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. part 3 as may be applicable, which are incorporated by reference into this Agreement.
- 32.11.7.2.** Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the federal government may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- 32.11.7.3.** Breach. A breach of the contract clauses above may be grounds for termination of this Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.
- 32.11.8. *Procurement of Recovered Materials.*** Contractor shall comply with the provisions of 29 C.F.R.323, including Section 6002 of the Solid Waste Disposal Act. Towards that end, in the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items, unless the product cannot be acquired: (1) competitively within a timeframe providing for compliance with the contract performance schedule; (2) meeting contract performance requirements; or (3) at a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

- 32.11.9. Domestic Preferences for Procurements.** To the greatest extent practicable, Contractor and its subcontractors shall provide preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, in accordance with 2 CFR 200.322, “Domestic preferences for procurements.”
- 32.11.10. 2 CFR Subpart F – Audit Requirements.** Contractor shall assist the Town in complying with the audit requirements under 2 CFR Subpart F – Audit Requirements (“Federal Audit Provisions”) and the reporting requirements of the U.S. Department of the Treasury’s Final Rule, as amended, and other guidelines issued in connection with the American Rescue Plan Act.
- 32.11.10.1.** Contractor shall assist the Town in complying with the Federal Audit Provisions by providing the Town, the State of Florida, the U.S. Department of the Treasury, the Treasury Office of the Inspector General, the Government Accountability Office, or other federal government entities, and any of their duly authorized representatives, access to personnel, accounts, books, records, supporting documentation, and other information relating to the performance of the Agreement or the Work (“Documentation”) necessary to complete federal audits. Contractor shall promptly assist the Town in the event Documentation must be supplemented to address audit findings or other federal inquiries.
- 32.11.10.2.** Contractor shall keep all Documentation up-to-date throughout the performance of this Agreement and the Work. Contractor shall provide the Town with all Documentation for each fiscal year by October 1 of each year or within five days of the completion of the Work, whichever occurs first. Contractor shall assist the Town in complying with additional guidance and instructions issued by the U.S. Department of the Treasury governing the reporting requirements for the use of American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Funds.

[PAGE LEFT INTENTIONALLY BLANK - SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year as first stated above.

TOWN OF CUTLER BAY

[NAME OF ENTITY]

By: _____
Rafael G. Casals, ICMA-CM, CFM
Town Manager

By: _____
Name:
Title:

Town Resolution No. ____ - ____

Witness:

Attest:

By: _____

By: _____
Mauricio Melinu
Town Clerk

Witness:

Approved as to form and legal sufficiency:

By: _____

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

Addresses for Notice:
Town of Cutler Bay
Attn: Town Clerk
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189
305-234-4262 (telephone)
mmelinu@cutlerbay-fl.gov (email)

Addresses for Notice:

_____ (telephone)
_____ (email)

With a copy to: Weiss Serota Helfman Cole & Bierman, P.L.
Attn: Chad Friedman Esq.
Town of Cutler Bay Attorney
2800 Ponce de Leon Boulevard, Suite 1200
Coral Gables, FL 33134
305-854-0800 (telephone)
cfriedman@wsh-law.com (email)

With a copy to:

_____ (telephone)
_____ (email)

