



TOWN OF CUTLER BAY

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# REQUEST FOR PROPOSAL

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**RFP No. 23-09**

**CONSTRUCTION FIRM**

**16 ACRE LEGACY PARK AND MUNICIPAL COMPLEX**

**SUBMITTAL DUE DATE:  
Friday March 8, 2024  
10:00 AM (EST)**

**NON-MANDATORY PRE-RFP RESPONSE MEETING DATE:  
Thursday February 15, 2024  
10:00 AM (EST)**



**TOWN OF CUTLER BAY NOTICE OF REQUEST FOR Proposals RFP NO. 23-09  
“CONSTRUCTION MANAGEMENT/DESIGN ASSIST SERVICES FOR 16-ACRE LEGACY  
PARK AND MUNICIPAL COMPLEX”**

The Town of Cutler Bay (“Town”) is requesting proposals from the top three (3) shortlisted Construction Firms (“CFs”) for **CONSTRUCTION AND DESIGN ASSIST SERVICES FOR 16-ACRE LEGACY PARK AND MUNICIPAL COMPLEX**. through the RFQ process.

Selected Firms should visit the Town’s website at [www.cutlerbay-fl.gov/rfps](http://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, CMC 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 **Thursday, February 15, 2024, at 10:00 AM EST**. The meeting will be available electronically using Zoom communications media technology platform. To register in advance, please visit [https://us06web.zoom.us/webinar/register/WN\\_wtf6mKVCQEm8f5XcR0WUVw](https://us06web.zoom.us/webinar/register/WN_wtf6mKVCQEm8f5XcR0WUVw)

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 RFP from the time of advertisement of the RFP 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 Ordinance 06-11; Town Code Chapter 8A; 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 proposals on this Project.**

Sealed RFP submittals must be received by Friday **March 8, 2024, at 10:00 AM 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 reserves the right to accept and/or reject all proposals, or parts of proposals, to workshop or negotiate any and all proposals, to waive irregularities, and to request revised/new proposals on the required materials and/or services or take any other such actions that may be deemed in the best interest of the Town.

We look forward to reviewing your submissions.

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



## SECTION I

### I INTRODUCTION

On February 6, 2024, the Town of Cutler Bay Selection Committee met and shortlisted the following three (3) Construction Firms based upon their submissions to RFQ 23-09:

- Kaufman Lynn Const., Inc.
- ANF Group LLC
- OHLA Building, Inc.

The shortlisted CFs will receive this RFP 23-09 on **Tuesday February 13, 2024, by 3:00 PM.**

The selection process for the three (3) shortlisted CFs is described and shown on the schedule of Events table below. The shortlisted three (3) CFs will comply with the schedule below for the Request for Proposal (RFP).

### PROJECT OVERVIEW

#### OVERVIEW

The Town of Cutler Bay (“Town”), a municipality located in the southern portion of Miami-Dade County, Florida, is accepting qualifications packages from construction firms (“CFs”) for the new 16 Acre Legacy Park and Municipal Complex (“Project”).

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 SW 184 Street to the north, US 1 Busway to the west, SW 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.

#### DESCRIPTION OF PROJECT

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 SW 212 Street.

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; the Project is a combined projected footprint of 40,000 net square feet, in addition to a three hundred (300) space, three (3) story parking garage.

The Town has finalized the Master Planning and programming phases. To assist with developing a proposal, the following information is enclosed:

- Attached Exhibit A: Scope of Services
- Attached Exhibit B: 16 Acres: Legacy Park and Municipal Complex Executive Summary
- Attached Exhibit C: Preliminary Concept Project Schedule
- Attached Exhibit D: Approved Master Plan (Town Reso. No. 23-68)
- Attached Exhibit E: Preliminary Schematic Design Package (Dated January 29, 2024)



When preparing the proposal, it is requested that CFs focus on ***both*** speed to market experience ***and*** Brownfield site experience.

On October 28, 2020, the Town of Cutler Bay (“Town”) Town Council adopted Resolution No. 20-70 which designated the parcels identified by folio numbers 36-6009-005-0015, 36-6009-005-0010, 36-6009-006-0010, 36-6009-006-0012, and 36-6009-006-0011 (“Subject Property”) as a brownfield area named the Cutler Bay CARE Zone pursuant to § 376.80(2)(a), Florida Statutes (“F.S.”), of Florida’s Brownfield Redevelopment Act. These parcels are owned by three real property owners: the Town; Publix Super Markets, Inc. (“Publix”); and GCF Investments, Inc.

Subject Property is a large former agricultural site with documented contamination from over 80 years of agricultural use. The purpose of designating a brownfield area is to promote environmental restoration and stewardship, economic redevelopment, and more sustainable growth patterns, among other purposes. Environmental restoration of vacant or underutilized property has been historically proven to remove stigma, reduce blight, improve air and stormwater quality, eliminate environmental health hazards, and in turn, spur redevelopment and revitalization.

In order to address the environmental issues on its portion of the Subject Property, Publix entered into a BSRA with the County, on December 29, 2020, for the parcel with folio number 36-6009-006-0012 and portions of the parcels with folio number 36-6009-005-0010 and 36-6009-006-0010 (“Publix BSRA”). The Publix BSRA created the Shoppes of Cutler Bay Green Reuse Site within the Cutler Bay CARE Zone brownfield area. Under the Publix BSRA, Publix initiated site rehabilitation activities on the aforementioned parcels and has received statutory brownfields liability protections and financial incentives through the Voluntary Cleanup Tax Credit (“VCTC”) program. By designating the entire Subject Property as Brownfield area and through the proposed action of joining the existing BSRA, the Town is acting in its capacity as steward of the environment by facilitating environmental remediation, promoting sustainable economic development in a centrally-located area of the Town, facilitating the provision of numerous new entertainment, restaurant, retail, and recreational opportunities for Town residents, and significantly reducing the cost to the taxpayer of environmental remediation and redevelopment of the Town’s property.

Pursuant to Resolution No. 21-40, approved on May 19, 2021, the Town entered into a Professional Services agreement with The Goldstein Environmental Law Firm, P.A. for the preparation and negotiation of a BSRA Amendment and a VCTC application for eligible brownfield site rehabilitation costs incurred in calendar year 2021.

## **ENVIRONMENTAL ISSUES**

The Subject Property consists of five parcels occupying a former agricultural site that operated for over 80 years. Although the presence of environmental contamination is always site-specific and varies based on numerous factors, long-term agriculture use is often considered a source for soil and groundwater contamination due to the historical application of herbicides, pesticides, and fertilizers. Such soil and groundwater contamination are not uncommon at former agricultural sites in southern Miami-Dade County. Former agricultural sites in the County are also subject to heightened assessment guidelines due to the likelihood of identifying contaminants associated with agricultural uses as redevelopment progresses. In 2020, the County’s Department of Regulatory and Economic Resources, Division of Environmental Resources Management (“DERM”) released new guidance requiring comprehensive soil and groundwater sampling at former agricultural sites undergoing redevelopment. Environmental assessments conducted at the Subject Property both by



Publix and the Town have documented contamination associated with the former agricultural use, thus triggering a requirement that the Town conduct site rehabilitation activities on its parcels in conjunction with planned redevelopment activities.

Publix entered into a BSRA with Miami-Dade County on December 29, 2020, for the parcel with folio number 36-6009-006-0012 and portions of the parcels with folio numbers 36-6009- 005-0010 and 36-6009-006-0010 (the "Publix BSRA"). The Publix BSRA created the Shoppes of Cutler Bay Green Reuse Site within the Cutler Bay CARE Zone brownfield area. Under the Publix BSRA, as the Person Responsible for Brownfield Site Rehabilitation ("PRFBSR"), Publix initiated site rehabilitation activities on the aforementioned parcels and has received statutory brownfields liability protections and financial incentives through the Voluntary Cleanup Tax Credit ("VCTC") program.

On November 17, 2021, the Town Council adopted Resolution No. 21-89 which authorized the Town Manager to execute an amendment to the Publix BSRA. The BSRA amendment added the Town-owned parcels with folio numbers 36-6009-005-0015 and 36-6009-006-0011 to the brownfield site, named the Town as an additional PRFBSR with Publix, and changed the brownfield site name to the Cutler Bay Civic and Resiliency Enhancement ("CARE") Site. Accordingly, the Town is now eligible to apply for Voluntary Cleanup Tax Credits ("VCTCs") for eligible site rehabilitation costs incurred every year until Miami-Dade County issues a Site Rehabilitation Completion Order ("SRCO") either with or without conditions.

## SCOPE OF SERVICES

The Project will be Design Assist ("DA") and the CF will operate as a member of an Owner – Owner's Representative - Architect - Construction Manager – team. The CF is to provide technical consultation and budgeting during the design stages of the Project and perform construction of the Project during the construction phase. The CF will be expected to take part in a collective and collaborative effort with the Project team members while maintaining the primary responsibility for the construction services. In accordance with this principle, Stantec Consultants Inc., the Town's Owner's Representative, and Town Representatives will have overall responsibility for coordinating the design and construction effort to ensure all team members provide their necessary services in a complete and timely manner. The Town's Design Team of Saltz Michelson Architects will have prime responsibility for the design of the Project within the scope approved by the Owner, including all mechanical and electrical systems. The CF's role during the design stage will be as an advisor on labor and material costs, project phasing, site logistics and constructability. The CF will also assist with cost estimates for the building, square foot costs for program elements, constructability reviews, detailed take-offs throughout the design and various pricing activities as required. The CF will also participate in a Target Value Design process with the overall Project team. The CF will be expected to take ownership of the construction schedule while offering methods and ideas to expedite the construction duration as much as possible. This includes, but is not limited to, engaging trade partners early in the process, and identifying long lead items for early release.

## SELECTION PROCESS

The three (3) Shortlisted Firms will be called for oral presentations before the Town's Selection Committee on **Tuesday March 12, 2024 (9:00 AM – 2:00 PM EST)**. All Prime CFs and their teams shall be present at the assigned time for a 20-minute presentation followed by up to a ten (10)-minute questions-and-answer session. The CFs are encouraged to be represented only by the Project Manager and the staff identified in the Response. Additional details on the oral



presentations may be provided to the short-listed CFs. The oral presentation will be worth twenty-five percent (25%) in the final scoring and the original response will be worth seventy-five percent (75%).

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

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

### I.I SEALED PROPOSALS

Sealed proposals for furnishing all professional services as necessary to complete the Work specified in these documents will be received at:

**Date: Friday, March 8, 2024**  
**Time: 10:00 AM**  
**Place: Town Hall**  
**10720 Caribbean Blvd., Suite 105**  
**Cutler Bay, FL 33189**

### I.II RFP SCHEDULE OF EVENTS

RFQ Short List Announced / RFP Provided to Short List Construction Firms	Tues. 2/13/24	3:00 PM
Non-Mandatory, Virtual, RFP Meeting (Short List Firms) Zoom Meeting ID: <b>835 5546 3329</b>	Thurs. 2/15/24	10:00 AM
Deadline to Submit RFQ Questions	Tues. 2/20/24	1:00 PM
Deadline to Submit RFQ-Response	Fri. 2/23/24	5:00 PM
Deadline to Submit RFP-Response (Short Listed Firms)	Fri. 3/8/24	10:00 AM
Oral Presentation RFP Short List Firms	Tues. 3/12/2024	9:00 AM-2:00 PM
Announcement of Selected Construction Firm – Cone of Silence Ends	Wed. 3/20/24	6:00 PM

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



### I.III DEFINITION OF TERMS

Certain terms used in this document are defined as follows:

<b>Agreement/Contract</b>	The Contract for CM/Design Assist Services to be executed by the Contractor and the Town for the scope of work.
<b>Day(s)</b>	Refers to calendar day(s).
<b>Design Team</b>	Saltz Michelson Architects
<b>Firm/CF</b>	The person, Construction Firm, or corporation with who the Town has executed an agreement or contract for the scope of work.
<b>Owner</b>	The Town of Cutler Bay
<b>Project Manager</b>	Stantec Consulting Services, Inc.
<b>Proposal/Qualifications</b>	The RFP/RFQ response documents submitted by the CF.
<b>Proposer/Respondent</b>	Any person, CF or corporation submitting a Proposal for work covered by these specifications or their duly authorized representative.
<b>Responsible Proposer</b>	In order to be considered a “responsible” proposer, the Proposer must possess integrity as well as adequate equipment and personnel to do the work within the time limits that are established and adequate financial status to meet the obligations to perform the scope of work. The CF must not have defaulted on a prior contract or been disbarred by any agency.
<b>Responsive Proposer</b>	Any person, CF or corporation submitting a Proposal for the scope of work whose proposal packet is complete and includes all required attachments and enclosures, free from exclusions or special conditions and has no alternative proposals for any items, unless alternatives are requested in the specifications.
<b>Town</b>	The Town Council of the Town of Cutler Bay or the Town Manager, if applicable.
<b>Work/Scope of Services</b>	The services required by the contract documents, including labor and materials.

### I.IV ELIGIBILITY

In addition, to other requirements stated in this document, to be eligible to respond to this RFP, the Proposer must have successfully provided within the past five (5) years, within the State of Florida, services similar to those in the specifications of this RFP. Each proposer shall meet all legal, technical, and professional requirements for providing the requested services.

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



## I.V RESPONSE/ (PROPOSAL PACKAGE) PREPARATION

### A) SUBMISSION REQUIREMENTS/CRITERIA FOR SELECTION

Each proposal shall be twenty (20) pages (paper size 8.5"x11), printed on only one side of the paper, single or the larger spacing, font size not less than 11.

Each CF 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:

1. A cover letter indicating the CF's interest in providing services to the Town and a statement on why the CF should be selected for the award.
2. A table of contents identifying the sections and page numbers.
3. Provide a detailed project approach of how you plan to successfully execute this project, within schedule and budget, to include the following:
  - a. Project Strategy
  - b. Staffing plan
  - c. How your firm plans to engage regional subcontractors.
  - d. Approach to the GMP.
  - e. How you plan to incorporate value engineering into this project.
  - f. Your approach to a collaborative construction / design assist process.
  - g. How you will deliver the project within the pre-established Owner budget constraints.
4. Define a successful project completion and what elements are key to its success.
5. Provide a proposed schedule and explain how your firm would meet or exceed schedule expectations.
6. FEE PROPOSAL - as outlined in SECTION II "Fee Structure"
  - a. Part A – Preconstruction Services (lump sum), along with definition of Construction Manager's involvement. While the current building program and project schedule are preliminary, please use these documents as a guide to estimate time and manpower.
  - b. Part B – Construction Services (percentage of construction costs against the estimate of Cost of Work – provide sliding scale based on a range of \$225,000,000 to \$275,000,000).





- c. Provide your change of work costs on a percentage of the Direct Cost of Work.
- d. Proposed staff and projected hourly commitment to the project. Again, it is understood this may vary slightly once the final project scope is determined.
- e. Hourly Rate Schedule – Indicate those employees which are included in your proposal.

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

## B) 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 before the Town's Selection Committee on Tuesday March 12, 2024 (9:00 AM – 2:00 PMEST).
- The oral presentation must only include staff that will be actively working on the project.

## I.VI SUBMISSION OF PROPOSAL

### A. 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 and must be clearly marked on the outside, RFP No. 23-09, Construction Firm Design Assist Services. The outside of the sealed envelope shall also show the name of the respondent.

All responses must be received at the Office of the Town Clerk at the Town Hall located at 10720 Caribbean Blvd., Suite 105, Cutler Bay, FL 33189, at which time their receipt will be publicly documented by the Town Clerk or her designee(s).

Proposals will be publicly opened and read. All CFs and/or their representative designees are invited to be present.

It shall be the sole responsibility of the Proposer to ensure that the sealed proposal is submitted by the time and date specified. Any proposal received after the appointed time, whether by mail or otherwise, shall not be accepted under any circumstances. Such proposals will be returned to the vendor unopened. Any uncertainty regarding the time a proposal is received shall be resolved against the Proposer.

Only one (1) proposal from any individual, CF, partnership, or corporation, under the same or different names, will be considered. If the Town determines that any Proposer has interest in more than one (1) proposal for work contemplated, all proposals in which such a Proposer is interested will be rejected. Proposer, by submitting this proposal, certifies that this proposal is made without previous understanding, agreement or connection with any person, CF or corporation making a proposal for the same material, supplies, equipment, or services and is in all respects, fair and without collusion of fraud.



## I.VII CLARIFICATION AND ADDENDA

If any person contemplating submitting a proposal under this RFP is in doubt as to the true meaning of the specifications or other documents (or any part thereof), the proposer must submit to the Office of the Town Clerk on or before **Tuesday February 20, 1:00 PM (EST)**, and a request for clarification via fax (305) 234-4251 or via e-mail to [mmelinu@cutlerbay-fl.gov](mailto:mmelinu@cutlerbay-fl.gov). All such requests for clarification must be made in writing and the person submitting the request will be responsible for its timely delivery. Any interpretation of the RFP, if made, will be made only by Addendum duly issued by the Office of the Town Clerk. A copy of such an Addendum will be posted on the Town's website under RFPs. If the Town finds it necessary to add to or amend this document prior to the RFP Response Submittal Deadlines, the Town will issue a written addenda/addendum. Each CF must acknowledge receipt of each addendum by signing the acknowledgement and providing it with its Response Submittal Packet.

## I.VIII CERTIFICATION

The signer of the Response to this RFP must declare, by signing the required appendices, which state that the person(s), CF(s) and parties identified in the Response Submittal Packet are interested in and available for providing the full scope of services; that the Response is made without collusion with any other person(s), CF(s) and parties; that the Response is fair in all respects and is made in good faith without fraud; and that the signer of the cover letter of the Response Submittal Packet has full authority to bind the person(s), CF(s) and parties identified in the Response.

## I.IX ACCEPTANCE OR REJECTION OF PROPOSALS

While pursuing this RFP process, the Town reserves the right to award contracts to CFs 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.

## I.X RETENTION OF RESPONSES

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

## I.XI PRESENTATION COSTS

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



## I.XII RFP EVALUATION METHOD AND CRITERIA

The Selection Committee, to be appointed by the Town Manager, will evaluate the responses based on the criteria and point value listed below.

Criteria		Maximum Points
1.	<p><b><u>Project Approach</u></b> Provide a detailed project approach of how you plan to successfully execute this project, within schedule and budget.</p> <ul style="list-style-type: none"> <li>• Strategy</li> <li>• Staffing Plan</li> <li>• Regional Subcontractors</li> <li>• GMP</li> <li>• Value Engineering</li> <li>• Design Assist Collaboration</li> <li>• Pre-established Owner Budget</li> <li>• Schedule</li> </ul>	50
3.	<p><b><u>Fee Proposal</u></b> As outlined in SECTION II</p>	30
2.	<p><b><u>Project Success</u></b> Define a successful project completion and what elements are key to its success.</p>	20
<b>TOTAL</b>		100

### **FINAL SELECTION**

The Selection Committee will rank the short-listed CFs based upon the RFP and oral presentations scheduled for **Tuesday March 12, 2024 (9:00 am – 2:00 PM EST)**. The oral presentation will be worth twenty-five percent (25%) in the final scoring and the RFP will be worth seventy-five percent (75%). If contract negotiations fail with any CF, the Town may undertake negotiations with alternative respondents. The Town and its Owner's Representative) shall subsequently negotiate specific project terms.

A Selection Committee appointed by the Town Manager will review and evaluate all submittals and will develop a final recommendation for the Town Manager.

The CF will be selected at the sole discretion of the Selection Committee. The Town reserves the right to waive any irregularities, reject any or all Qualification Packages, reject a submission which is in any way incomplete or irregular, re-bid the entire solicitation or enter into agreements with more than one respondent. RFPs received after the deadline of **Friday March 8, 2024, at 10:00 AM EST** will not be considered.



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

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

### I.XIII AWARD OF CONTRACT

Once the RFPs are opened, a Selection Committee will evaluate the proposals and a recommendation will then be presented to the Town Manager.

It is the Town's intent to award the contract to one (1) CF; however, the Town reserves the right to award the contract to additional CFs, if the Town deems it is in the Town's best interest.

The contract will be awarded only to a responsible CF licensed and qualified by experience to perform the scope of work specified. The CF shall submit, prior to award of contract, satisfactory evidence of experience in similar work and that the proposer is fully prepared with the necessary organization, capital, and equipment to complete the full scope of work. The Proposer shall be insured, licensed, and certified by all applicable Local, County and State agencies.

The CF warrants to the Town that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the contract.

This signed proposal is considered an offer on the part of the CF, which offer shall be considered as accepted upon approval by the Town Council. Within five (5) business days after receiving Notice of Award the successful proposer shall submit a revised Certificate of Insurance naming the Town as additional insured for all liability policies.

The award is subject to the provisions of Chapter 112, Florida Statutes. Proposers must disclose with their proposal the name of any officer, director, partner, proprietor, associate, or agent who is also a public officer or employee of the Town or any of its agencies. Further, all Proposers must disclose the name of any public officer or employee of the Town who owns, directly or indirectly, an interest of five percent (5%) or more in the Officer's CF or any of its branches or affiliate companies.

### I.XIV CONTRACT TERM

The CF agrees that time is of the essence and the CF shall perform and complete the Work within the time frames as agreed upon by the CF and the Town Manager or his designee. The Town may terminate the agreement upon thirty (30) days' notice without giving any reason.



## I.XV NEGOTIATIONS

After selection of the CF(s) by the Town Council, the Town Manager or designee(s) shall negotiate a Contract with the selected CF(s) with terms that incorporate the major terms and conditions contained in the RFP. Any award and execution of a Contract shall be subject to approval by the Town Attorney as to form, content, and legal sufficiency. Should the Town Manager be unable to negotiate a satisfactory contract with the selected CF, the Town Manager may terminate negotiations with that Consultant. The Town Manager or designee(s) shall then undertake negotiations with the next highest-ranked Consultant, and, if negotiations are terminated, shall continue to each next highest-ranked Consultant until a satisfactory contract may be negotiated.

Upon reaching mutually agreeable terms with the selected CF(s), the Contract for the selected CF shall be presented to the Town Council for final approval. Any award shall be subject to execution of the Contract.

## I.XVI LAWS/ORDINANCES

The CF shall observe and comply with all Federal, State, Local and Municipal laws, ordinances, rules, and regulations that would apply to this Contract. Failure to familiarize the Proposer with applicable laws will in no way relieve the Proposer from responsibility.

## I.XVII ERRORS AND OMISSIONS

The Town is not required to accept any request by any CF to correct errors or omissions in any calculations or price, after proposal is submitted. Proposals which are incomplete, unbalanced, conditional or obscure or which contain additions not called for, erasures, alterations, or irregularities of any kind or which do not comply with the Request for Proposals may be rejected at the option of the Town. The Town does, however, have the option to waive technicalities and request further information or clarification.

## I.XVIII WARRANTIES OF USAGE

No warranty is given or implied by the Town as to any components listed in this RFP and are considered to be estimates for the purpose of information only. The Town reserves the right to accept all, or any part, of the Proposal, and to increase or decrease locations of Proposer's Proposal to meet additional or reduced requirements of the Town.

## I.XIX ASSIGNMENT

Neither party to the Contract shall assign the Contract or subcontract it as a whole without the written consent of the other, nor shall the CF assign any monies due or to become due, without the previous written consent of the Town Manager or his designee.

## I.XX COLLUSION

The CF certifies that its proposal is made without previous understanding, agreement, or connection either with any previous CFs or corporations offering a proposal for the same items, or with the Town. The CF also certifies that its proposal is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action.



## I.XXI PROHIBITION AGAINST CONSIDERING SOCIAL, POLITICAL, OR IDEALOGICAL INTERESTS IN GOVERNMENT CONTRACTING

Pursuant to Section 287.05701, Florida Statutes, the Town shall not give preference to any Respondent based on their social, political, or ideological interests, nor shall the Town request documentation of or consider any of the Respondent's social, political, or ideological interests.

## I.XXII CAMPAIGN FINANCE RESTRICTIONS ON VENDORS

Pursuant to Ordinance 06-11; Town Code Chapter 8A; Section 7.6 of the Town Charter, vendors of the Town are required to disclose any campaign contributions to the Office of 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.

## I.XXIII VENDORS' CAMPAIGN CONTRIBUTION DISCLOSURE

### A) General requirements:

- 1) 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, 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.
- 2) The disclosure shall be filed prior to and as a condition of the award of any Town contract to the Vendor.
- 3) 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.
- 4) If an existing vendor makes a contribution, the vendor must report the same to the clerk within ten (10) days of its acceptance or prior to being awarded any additional contract or renewal, whichever occurs first.
- 5) The Town Clerk shall file a quarterly report with the Council, which lists all the vendor disclosures in the quarter.

### B) Disqualification:

- 1) 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.



## I.XXIV LOBBYIST REGISTRATION

CFs must also comply with all Town Charter sections and Code Provisions that pertain to lobbyists, including Section 7.6 of the Town Charter and implementing ordinance(s), including Sec. 2-11(s) of the Town Code and Ordinance 07-02. Please contact the Town Clerk at (305) 234-4262 for additional information. CFs shall complete a “Lobbyist Registration for Oral Presentation” form and all persons listed thereon shall be considered to 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.

## I.XXV PUBLIC RECORDS LAW

The CF acknowledges that the public shall have access, at all reasonable times, to certain documents and information pertaining to Town contracts, pursuant to the provisions of Florida State Statute, Chapter 119.

CF agrees to keep and maintain public records in CF’s possession or control in connection with CF’s performance under this Agreement. The CF additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. CF shall ensure that public records that are exempt or confidential and exempt from public record 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.

Upon request from the Town’s custodian of public records, CF 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.

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. 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 CF shall be delivered by the CF to the Office of the Town Clerk, at no cost to the Town, within seven (7) days. All such records stored electronically by CF 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 CF shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosures requirements. Any compensation due to CF shall be withheld until all records are received as provided herein. CF’s failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.



## **SECTION 119.0701(2)(A), FLORIDA STATUTES**

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

**Custodian of Records:** Mauricio Melinu, Town Clerk, CMC

**Mailing address:** 10720 Caribbean Boulevard  
Suite 105  
Cutler Bay, FL 33189

**Telephone number:** (305) 234-4262

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

### **I.XXVI CONE OF SILENCE**

Notwithstanding any other provision of these specifications, the provisions of Town "Cone of Silence" are applicable to this transaction. The entirety of these provisions can be found in the Town's Purchasing Ordinance, Town Ordinance 06-22. The "Cone of Silence," as used herein, means a prohibition on any communication regarding a particular RFQ, RFP or ITB between:

- A) A potential vendor, service provider, proposer, lobbyist, or CF; and
- B) 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 committee.

The Cone of Silence shall be imposed upon each RFQ, RFP and ITB after the advertisement of said RFQ, RFP, or ITB. The Cone of Silence shall terminate at the beginning of the Town Council meeting at which time the Town Manager makes his or her 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 the meeting at which the Manager's subsequent recommendation is before the Town Council.

The Cone of Silence shall not apply to:

- 1) Oral communications at pre-proposal conferences.
- 2) Oral presentations before selection committee.
- 3) Public presentations made to the Town Council during any duly noticed public meeting.
- 4) Communication in writing at any time with any Town employee, unless specifically prohibited by the applicable RFQ, RFP or Proposal documents. The





Proposer or proposer shall file a copy of any written communication with the Town Clerk. The Town Clerk shall make copies available to any person upon request.

- 5) Communications regarding a particular RFQ, RFP or Proposal between a potential vendor, service provider, proposer, Proposer, lobbyist or CF and the Town's Purchasing Agent or Town employee designated responsible for administering the procurement process for such RFQ, RFP or Proposal, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.
- 6) Communications with the Town Attorney and his or her staff.
- 7) Duly noticed site visits to determine the competency of CFs regarding a particular Proposal during the time period between the opening of Proposals and the time the Town Manager makes his or her written recommendation.
- 8) Any emergency procurement of goods or services pursuant to Town Code.
- 9) Responses to the Town's request for clarification or additional information.
- 10) Contract negotiations during any duly noticed public meeting.
- 11) Communications to enable Town staff to seek and obtain industry comment or perform market research, provided all communications related thereto between a potential vendor, service provider, proposer, Proposer, lobbyist, or CF 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 at (305) 854-0800 for any questions concerning the Cone of Silence compliance.

## I.XXVII POINT OF CONTACT

Any inquiries concerning clarifications of solicitation or for additional information shall be submitted in writing to Mauricio Melinu, CMC, Town Clerk via e-mail to [mmelinu@cutlerbay-fl.gov](mailto:mmelinu@cutlerbay-fl.gov) on or before **Tuesday February 20, 2024, at 1:00 PM (EST)**. The Town shall not be responsible for oral interpretations given by any Town employee or its representative.

## I.XXVIII 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.

Respondent acknowledges that compensation for the Services performed under the Agreement may be fully or partially funded using ARPA Funding. In order 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 is available for inspection by the Contractor at the Office of the Town Clerk and at the following Town link: <https://www.cutlerbay-fl.gov/arpa>

### I.XXIX WOMEN/MINORITY OWNED AND EMERGING SMALL BUSINESS BID SUBMITTAL

Town affirms it has encouraged women-owned, and disadvantaged businesses as Proposers for the Project and to be responsive to the opportunity of the award of this contract.

CF, or any subconsultants performing work under this contract, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CF shall carry out all applicable requirements of 49 CFE Part 26 in the award and administration of this contract. Failure by the CF to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or other such remedy as the Town deems appropriate.

**[END OF SECTION]**



## Section II

### II.I FEE STRUCTURE

It is the Owner's intent to enter into a two-part agreement with the successful CF. The primary purpose for using the two-part agreement is to allow the Owner to enter a limited obligation with the CF during the early design phase of the Project. The proposed agreement shall consist of the following:

- A) CF's Consultation Services during the Design Phase and Development of the GMP (Part "A")
- B) GMP for the Construction Phase (Part "B")

The Owner will consider the following fees and estimates for general conditions:

- A lump sum, fixed fee for services rendered during the preconstruction and design phase (Part "A"). While the current building program and project schedule are preliminary, please use the documents included in attached Exhibits A-E to estimate the time and manpower required for the preconstruction effort.
- The fee for services during the construction phase, Part "B".

Provide a sliding-scale fee as a percentage of the construction costs, which shall be converted into a lump sum, fixed fee at the time the GMP is submitted to the Owner.

The CF'S fee for construction phase services (Part "B") shall be determined by the stipulations noted in the GMP. Additionally, the fee for construction phase services shall include the following items, and therefore are not reimbursable as General Conditions:

- 1) Compensation to officers or principals, services of the management staff above the level of Project Manager, salaries of home office personnel (including, but not limited to, accounting, purchasing, estimating, and cost control departments), and related income taxes, payroll taxes, insurance, and pensions.
- 2) Profit, overhead, and cost of Project related home office facilities expenses.
- 3) Recruitment costs for home office job site personnel.
- 4) Professional fees for consultation, legal, labor relations, accounting, and bookkeeping expenses.
- 5) Information Technology costs and support staff based in the home office and supporting the field office.
- 6) Any 3<sup>rd</sup> party IT or legal costs required to establish or maintain the project systems.



- C) General Condition: General Conditions shall be estimated based upon the construction schedule and should be sufficiently broken down by staff and other components. The following list further details items to be reimbursed as General Condition's costs:
- 1) Salaries of CF'S personnel when stationed at the Field Office in whatever capacity employed, and the portion of salaries of other personnel when engaged at shops or on the road in expediting the production or transportation of materials or equipment, provided the use of such personnel and the wage rate of such personnel have received the prior written approval of Owner. Cost of contributions, assessments, or taxes for such items as unemployment compensation and FICA, in so far as such costs are based on wages, salaries or other remuneration paid to employees of CF included in the Cost of the Work.
  - 2) The cost of repairs and preventive maintenance to any leased equipment or CF owned equipment.
  - 3) The proportion of reasonable transportation, traveling and hotel expenses of CF, their officers, or employees incurred in the discharge of duties connected with the Work, provided the incurrence of such expenses has received the prior written consent of Owner.
  - 4) Temporary heat, water, electricity, telephone, and toilets.
  - 5) Temporary construction barriers and infection control measures.
  - 6) Temporary fence, sidewalk, bridges, roadways, and elevators.
  - 7) Final cleaning.
  - 8) Field office and its related costs, equipment, and furnishings.
  - 9) Safety barricades, construction signs and watchmen.
  - 10) Messenger service.
  - 11) First aid station.
  - 12) Cost of premiums for Builder's Risk Insurance as required by this Agreement to purchase and maintain, if required to be maintained by the CF.
  - 13) Define the CF's insurance cost as a percentage of construction.
  - 14) Fees for building and similar permits required for the performance of the Work.
  - 15) Minor expenses such as long-distance telephone calls, telephone service at site, expressage, and similar petty cash items in connection with the Work.
  - 16) Cost of removal of all debris (excluding hazardous material).

**[END OF SECTION]**



## **Section III Pre-Construction Services Agreement**

### **LEGACY PARK**

#### **PRECONSTRUCTION SERVICES AGREEMENT**

**THIS PRECONSTRUCTION SERVICES AGREEMENT** (this “Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”) by and between the **TOWN OF CUTLER BAY, FLORIDA** (the “Town”), and **[INSERT CONTRACTOR’S NAME]**, a **[INSERT TYPE OF BUSINESS ENTITY]** (“Contractor”).

#### **RECITALS**

WHEREAS, Town wishes to perform certain work in connection with the Phase II development of the 16-Acre Legacy Park and Municipal Complex (the "Project"); and

WHEREAS, Town has retained Saltz Michelson Architects, Inc., (“Architect”) for the Project to produce all plans and specifications for the Project; and

WHEREAS, the Contractor has expertise in managing and constructing projects similar to this Project, identifying construction-related problems in design documents, estimating construction costs, scheduling renovation projects, and expertise in identifying existing conditions in such projects; and

WHEREAS, to the extent Contractor is qualified, the Town wants the advice, recommendations, and services of Contractor as part of Town’s effort to identify issues in the design and provide alternative ideas, all in an effort to minimize construction-related problems, minimize change orders, and to deliver a high-quality product which will be in accordance with Town’s budget; and

WHEREAS, the Town expects the Contractor to coordinate with the Architect and determine any construction-related issues prior to beginning work on the Project; and

WHEREAS, the Contractor understands that it is the Town’s intent by engaging the Contractor to reduce change orders in the construction of the Project related to unforeseen conditions and constructability issues and to ensure timely completion of the construction of the Project; and

WHEREAS, the Town has decided to engage the Contractor, and the Contractor desires to be engaged by the Town, to provide preconstruction services for the Project pursuant to the terms of this Agreement; and

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



## ARTICLE 1: SCOPE OF SERVICES

### § 1.1 General Provisions

§ 1.1.1 The Town wishes to retain Contractor to do and perform certain preconstruction phase consulting services work, for the price and terms more particularly set forth in this Agreement. Preconstruction Phase is defined as the design and feasibility analysis processes occurring prior to the awarding of a master permit (the “Preconstruction Services”).

§ 1.1.2 In addition to the Preconstruction Services, the Contractor shall perform the Design Assist Services as set forth in this Article. The Preconstruction Services and the Design Assist Services shall be collectively referred to herein as the Services.

§ 1.1.3 Contractor will provide the following Services in connection with the Project through termination or through the execution of a Contract with the Contractor for the construction of the Project, whichever is earlier.

§ 1.2 **Consultation.** Contractor shall attend all meetings relating to the Project as reasonably required to perform the Services and as otherwise directed by the Town, and proactively participate in such meetings. The Contractor shall consult with and advise the Town and the Architect, and various other consultants retained by Town (the “Project Team”) with respect to the following:

- (a) Provide recommendations regarding the Town's objectives, requirements and goals for the Project, including, without limitation, those relating to and identifying how the construction of the design (including site logistics) for the Project, will be best achieved.
- (b) Review and make recommendations regarding details of the systems to be incorporated into the Project, as well as all materials and major design and construction elements to be incorporated into the Project, taking into consideration costs, availability, lead time for ordering, speed of construction and maintenance.
- (c) Review existing conditions, not requiring any destructive testing or inspections, and advise Town and Architect of existing conditions that will or may impact the design documents, construction, and/or scheduling.
- (d) Prepare any estimates of the cost of the work contemplated.
- (e) Contractor shall present potential cost saving alternatives for review, evaluation, and selection.
- (f) Explore demolition work and/or other work directed by Town.

§ 1.3 **Design Assist.** Contractor represents that it has participated in and completed design-assist construction of similar projects. Contractor shall assist the Architect with the constructability and/or efficiency of the Project’s design. The Contractor is selected to review and participate in the production of the construction documents.



**§ 1.3.1** Contractor is engaged in a design-assist capacity for the Project. As part of the Design Assist Services, Contractor shall review and participate in the production of the Construction Documents. Contractor and Architect will work together to produce design documents that maintain a construction budget as detailed below and the preparation of detailed Construction Documents necessary to allow the Contractor to bid out the work and submit permit level documents to obtain a building permit. The Design Assist Services will include participation in the refinement of the Project design during the Schematic Design, Design Development, and Construction Document design phases, and assistance with preparation and coordination of the design documents from a constructability standpoint, including but not limited to mechanical, electrical, plumbing, HVAC, life-safety, and other existing systems within Project scope.

**§ 1.3.2** The Contractor will participate in Design Assist Services in cooperation with the Architect and the Project Team and will monitor the progress of the refinements to the design documents, preparation of the Construction Documents, and submission for building permit through the following activities:

- (a) Attend meetings regularly to assist design refinements and Construction Documents;
- (b) Prepare a preliminary Construction Schedule;
- (c) Prepare Cost Estimates at the completion of the Schematic Design, Design Development, and Construction Documents to validate proposed construction budget;
- (d) Provide estimated construction cost breakdowns of the Project at the intervals required by the Town; and
- (e) Conduct constructability reviews at the intervals required by the Town.

**§ 1.3.3** During the Design Phase, the Contractor will cooperate with the Architect, Subcontractors, and Project Team to perform the following Design Assist Services:

- (a) Lead a series of meetings between the Contractor, Architect, and Project Team to (1) Establish baseline cost model; (2) Prepare milestone cost estimates; (3) Alternative strategies and value analysis; (4) Permitting strategy; (5) Constructability review and comment; and (6) Prepare preliminary construction schedule;
- (c) Validate the construction budget against the Project scope/schedule at 100% Schematic Design, Design Development, and Construction Documents.

**§ 1.3.4** The Contractor shall exercise reasonable care in performing its Design Assist Services.

**§ 1.3.5** The Contractor shall perform its Design Assist Services in coordination with the Town and the Project Team in order to avoid any delay in the orderly and sequential progress of the services provided by the Town and the Project Team.



§ 1.3.6 The Contractor shall review documents and information furnished by the Town, and furnished by the Project Team, that relate to the Design Assist Services and provide prompt written notice to the Town if the Contractor observes or otherwise becomes aware of any errors, omissions, or inconsistencies between such documents and information and the Design Assist Services. The Contractor is not responsible for ascertaining that the documents or information are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall verify same and promptly (within three (3) days of discovery) report in writing to the Town any nonconformity discovered by or made known to Contractor.

§ 1.3.7 The Contractor shall review laws, codes, and regulations applicable to the Contractor's Design Assist Services.

§ 1.3.8 The Contractor shall recommend to the Town any appropriate investigations, surveys, tests, analyses, reports, and services of other consultants that should be obtained for the proper execution of the Project.

§ 1.3.9 Within seven (7) days of execution of this Agreement, the Contractor (in cooperation with the Architect and the Project Team) shall prepare and provide to the Town a proposed schedule to establish the milestones for the Project Schedule. The Project Schedule shall include allowances for periods of time required for (a) the performance of the Contractor's obligations under this Agreement, (b) the Town's review of deliverables submitted by the Contractor, (c) if required, incorporation of the deliverables into the Construction Documents, and (d) if incorporated, review of the Construction Documents by the Contractor. The time limits established by the Project Schedule shall not, except for an authorized time extension under this Agreement, be exceeded by the Contractor.

**§ 1.4 Prepare Construction Project Budget.** Assemble a Line Item Construction Budget ("Construction Budget") that will serve as the basis for the Project's Guaranteed Maximum Price ("GMP"). The Contractor will develop a line item budget and schedule of values containing all aspects of the Town's anticipated costs required for the construction portion of the Project. The Town and the Project Team shall advise the Contractor to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Construction Budget. The Contractor will provide the following services in developing a Construction Budget to construct the Project.

- (a) Prepare and present a preliminary estimates based on design documents as developed through the date of this Agreement (if any), then an estimate based on 100% Schematic Design documents, which will include a list of Project documents, assumptions and clarifications and trade line item breakdown, and an estimate based on 100% Design Documents, which will also include a list of project documents, assumptions, clarifications, allowances, and a trade line breakdown. Prepare a final GMP based upon 100% Construction Documents and present trade line-item project cost estimates and a Construction Budget as directed by the Town.





- (b) Develop an approved subcontractor bidders list for the Town.
- (c) Develop a comprehensive trade scope sheet.
- (d) Obtain bids from potential subcontractors and share information with the Town.
- (e) Analyze bids with Town and prepare written evaluation sheets with recommendations.
- (f) Analyze costs and provide costs for options or alternates.

§ 1.4.1 The Construction Budget, upon the Town’s approval thereof, will become the benchmark against which bid costs and actual costs will be measured.

§ 1.4.2 The Contractor shall advise the Town and Project Team in writing within forty-eight (48) hours if it appears that the Construction Budget will not be met and make recommendations for corrective action including, without limitation, if requested by Town, recommendations for revisions to the Construction Documents to bring the budgeted cost of the work within the limits of the Construction Budget. Contractor shall bear the full cost and expense of such revisions to the extent they are not caused by the actions of the Town.

§ 1.4.3 The Contractor shall prepare, at its sole cost and expense, revisions to its deliverables that may be required as a result of Contractor’s inaccuracies or incompleteness in preparing cost estimates.

§ 1.5 **Necessary Approvals.** The Contractor shall, upon the Town’s request, assist the Town in obtaining necessary Project approvals in a timely fashion as not to adversely impact the Schedule. The Contractor will be responsible for assisting the Town in obtaining any and all permits and/or other approvals or authorizations required for construction, and assist in obtaining the building permit.

§ 1.6 **Communications and Recommendations.** The Contractor shall maintain written records of all communications with, and recommendations made to, the Project Team and their responses thereto, make the same available for inspection by the Town at all times and promptly furnish to the Town copies of all correspondence between the Contractor and Project Team members relative to the Project.

§ 1.7 **Accounting Records.** The Contractor shall keep full and detailed records and accounts related to the cost of the work, and exercise such controls, as may be necessary for proper financial management under this Agreement and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Town. The Town (and its auditors, if any) shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor’s records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, subcontractor’s proposals, subcontractor’s invoices, purchase orders, vouchers, memoranda, and other data relating to this Agreement. The Contractor shall preserve



these records for a period of four (4) years after Final Payment, or for such longer period as may be required by law. In addition, the Contractor agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Such right of access may also be exercised post termination if the Agreement is terminated for default or convenience. Audits conducted under this Section shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing audit agency. The Contractor agrees to the disclosure of all information and reports resulting from access to records under this Section to the Town, provided that the Contractor is afforded the opportunity for an audit exit conference. If the Town audits the Contractor's books and records and discovers actual costs or an error in the Contractor's favor by more than one percent (1%) of the cost of the work to date, the Contractor shall reimburse the Town for the cost of such audit and the Contractor shall promptly refund the amount overpaid to the Town.

**§ 1.8 Prepare for Bid and Award of Subcontracts.** To the extent requested by Town, the Contractor shall assist the Town and the Project Team to prepare the Project for Bid and Award to Subcontractors as follows (recognizing the preparation and submission of a GMP Agreement, as may be agreed to by Town and Contractor (it being agreed that neither party is obligated to enter into any such agreement), is to be addressed in a separate form of Town-Contractor Agreement).

**§ 1.9 Town-Contractor Agreement.** If the Town notifies the Contractor that the Town has accepted Contractor's proposal for construction of the Project, the construction services proposal will be memorialized using a Modified AIA A102 Standard Form Agreement between the Town and Contractor and a Modified AIA A201, General Terms and Conditions, subject to the Town's review and execution.

## ARTICLE 2: CONTRACTOR'S RESPONSIBILITIES

**§ 2.1 Fiduciary Relationship.** The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Town to cooperate with the Town. Further, Contractor acknowledges and accepts its fiduciary duties and obligations to the Town in performing its Services, and covenants with the Town to exercise the Contractor's best efforts and highest skill and judgment in furthering the interests of the Town to furnish efficient business administration; construction administration, management services and supervision; to furnish at all times a sufficient supply of workers and skilled personnel and materials and equipment; and to perform the Services in an expeditious and economical manner consistent with the Town's best interests.

**§ 2.2** In performing the Services, the Contractor shall: (a) Exercise reasonable skill, care and diligence, which is to be expected of a competent Contractor, experienced in carrying out work of a similar size, scope, and complexity in Florida; (b) Apply its knowledge, ideas, experience and abilities to the execution of the Services set forth in this Agreement.

**§ 2.3 Contractor's Key Employees**



§ 2.3.1 Contractor shall assign to the Project the key employees ("Key Employees"), a list of which is included as **Exhibit A** to this Agreement, who shall not be replaced without the Town's prior written consent, which shall not be unreasonably withheld. Unauthorized replacement of the Key Employees by the Contractor may be deemed to be a material breach of this Agreement.

§ 2.3.2 It is accepted that Contractor's employees may have to work hours in excess of the normal hours when the demands of the assignment require them so to do. Contractor may from time to time and only upon the Town's written approval, change the individuals providing the Services to the Town.

## § 2.4 Construction Schedule

§ 2.4.1 As part of its Preconstruction Phase Services, Contractor shall prepare a preliminary Construction Schedule (the "Construction Schedule"), identifying (1) the date of commencement of the Work, interim schedule milestone dates, the date of Substantial Completion, and the date of Final Completion; (2) an apportionment of the work by construction activity; and (3) the time required for completion of each portion of the work. The Construction Schedule shall provide for the orderly progression of the work to completion and shall not exceed time limits currently set forth in Article 3 of this Agreement.

§ 2.4.2 Contractor's Construction Schedule shall include a list of Town requirements and actions which Contractor is aware of, that Town must take care of so that the Project will not be delayed. If Contractor learns of additional items or actions that Town must take care of so that the Project will not be delayed, Contractor shall update Contractor's Construction Schedule to add the additional Town requirements and actions. In addition, Contractor shall provide Town with a list of Town requirements and actions, which Contractor is aware of, that Town must take care of so that the Project will not be delayed.

§ 2.4.3 The Construction Schedule shall be in a detailed, precedence-style, resource loaded, critical path method (CPM) type format satisfactory to the Town and the Architect which shall also: (1) provide a graphic representation of all activities and events that will occur during performance of the work; (2) identify each phase of construction, Substantial Completion, Temporary Certificate of Occupancy Dates, Certificates of Occupancy and Final Completion; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the work in accordance with the requirements of the Agreement (hereinafter referred to as "Milestone Dates"). Contractor shall provide Town with the original/planned, resource loaded Construction Schedule in P6 native electronic files (.xer format) such that Town may see Contractor's logic.

## ARTICLE 3: TIME

§ 3.1 All time limits and obligations are of the essence in the Agreement.

§ 3.2 Contractor shall commence the Services within seven (7) calendar days of execution of this Agreement.

§ 3.3 [OMITTED]



§ 3.4 [OMITTED]

§ 3.5 [OMITTED]

§ 3.6 The Project’s Construction Phase shall commence no later than \_\_\_\_\_ months after execution of this Agreement and shall achieve Substantial Completion within \_\_\_\_\_ calendar days from the date the Notice of Commencement is issued. Final Completion shall be achieved within thirty (30) days of the date of Substantial Completion.

#### ARTICLE 4: COMPENSATION

§ 4.1 In consideration of the Services to be performed by Contractor pursuant this Agreement, Town shall pay Contractor a preconstruction fee (the “Contract Price”) of \_\_\_\_\_. The Contract Price shall be full compensation for all services, labor, materials, equipment and costs, including overhead and profit, associated with completion of all the Services in full conformity with the terms of the Agreement and adjusted only by written change orders signed by both parties and approved as required by local law.

§ 4.2 The Town shall make progress payments, deducting the amount from the Contract Price above on the basis of Contractor’s Applications for Payment on or before twenty (20) days after receipt of the Pay Application. Rejection of a Pay Application by the Town shall be within twenty (20) days after receipt of the Pay Application. Any rejection shall specify the applicable deficiency and necessary corrective action. Any undisputed portion shall be paid as specified above.

§ 4.3 Applications for Payment shall be submitted monthly by Contractor on or before the 10th of each month for the prior month. Progress payments shall be made in an amount equal to the percentage of Services completed as determined by the Town or Town’s Project Consultant, but, in each case, less the aggregate of payments previously made and less such amounts as Town shall determine or Town may withhold taking into account the aggregate of payments made and the percentage of completion in accordance with the Agreement, if any.

§ 4.4 The payment of any Application for Payment by the Town, including the final request for payment, does not constitute approval or acceptance by the Town of any of the Services reflected in such Application for Payment, nor shall it be construed as a waiver of any of the Town ’s rights hereunder or at law or in equity.

§ 4.5 The Town shall also reimburse Contractor, without retention, and at cost without markup for all miscellaneous out-of-pocket expenses (including but not limited to such items as document reproduction, postage, messenger, etc.), incurred in connection with the Project, but only to the extent they are previously approved in writing by the Town.

§ 4.6 This Agreement is subject to the conditions precedent that: (i) Town funds are available and budgeted for the Contract Price; (ii) the Town secures and obtains any necessary grants or loans for the accomplishment of this Project pursuant to any borrowing legislation adopted by the Town Council relative to the Project; and (iii) Town Council enacts legislation which awards and authorizes the execution of this Agreement if such is required.



§ 4.7 Any additional services requested by Town shall be agreed upon in advance and in writing. Additional Services approved by Town in writing shall be paid to Contractor within twenty (20) days of receipt of Contractor's Application for Payment, including all back up of the costs incurred for Additional Services, and upon receipt of releases of lien for Contractor and all subcontractors, suppliers, materialmen or laborers which shall be conditioned only upon payment.

#### **ARTICLE 5: DELAYS AND EXTENSIONS OF TIME**

§ 5.1 If the Contractor is delayed at any time in the commencement or progress of the Services by (1) an intentional act or neglect of the Town; (2) by changes ordered in the Services; (3) by labor disputes, fire, unusual delay in deliveries impacting the South Florida construction industry, unavoidable casualties, or (4) by other causes (unrelated to any act/omission of Contractor or any individuals or entities for which Contractor is responsible) that the Contractor asserts and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the exceptions set forth in this Agreement.

§ 5.2 Adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused, in whole or in part, by the Contractor, or its Subcontractors and material suppliers; (2) could not be limited or avoided by the Contractor's timely notice to the Town of the delay; (3) is of a duration not less than one (1) Business day; (4) impacts the critical path of the Project; and (5) was mitigated by the Contractor to the maximum extent practicable. All requests for extensions of time other than those associated with changes in the Services, must be submitted in writing to the Town within five (5) calendar days of the event giving rise to the delay. Failure to request an extension will constitute a waiver of any right for an extension of time.

§ 5.3 The Contractor shall use its best efforts to avoid all labor conflicts. All direct and consequential losses due to labor disputes except those of a national, state-, or city-wide nature and not directed at Contractor or its Subcontractors shall be borne by the Contractor.

§ 5.4 Claims relating to time shall be made in accordance with applicable provisions of Article 7 of this Agreement.

§ 5.5 **No Damage for Delays.** Except for delays due to the active interference by the Town, Contractor's sole and exclusive remedy for delays shall be an increase to the Contract Time. Contractor shall not be entitled to an increase in the Contract Price or to payment of any other additional monies from the Town for costs incurred as a result of such delay. The Town's exercise of its rights under this Agreement shall in no way be considered active interference.

#### **§ 5.6 Town's Entitlement to Delay Damages**

§ 5.6.1 The Contractor acknowledges that the Contract Time for completion of all Services shall occur on or before specified date(s) as provided in Article 3 of the Agreement, subject to any extensions of the Contract Time. The Contractor acknowledges and agrees that the Town will suffer financial loss in the event of delay and the Town shall be entitled to liquidated damages as set forth below.



### **§ 5.6.2 Liquidated Damages.**

**§ 5.6.2.1** In the event that the Contractor fails to perform the Services within a timely manner as set forth in this Agreement, and the time to complete such Services has not been extended by a properly executed Change Order, if such delay is caused by the Contractor, or other persons or entities providing Services or work for the Contractor, the Town shall be entitled to collect liquidated damages from the Contractor. The Town and Contractor agree that, because of the nature of the Services, the inability of the parties to precisely calculate actual damages for delay and the difficulty of determining these damages, the sum of [insert amount] shall be assessed for each calendar day of delay in completing the Services. It is hereby agreed that the amount of the per diem assessment is not a penalty and not excessive in light of the circumstances known to the parties at the time this Agreement is executed.

**§ 5.6.2.2** The above liquidated damages provision shall not affect either party's right to terminate this Agreement nor shall it limit any of the other remedies as provided in the Agreement. The Town's exercise of its right to terminate this Agreement shall not release the Contractor from its obligation to pay liquidated damages in the amount set forth herein. Such assessments shall be immediately due and payable to the Town or, at the Town's option, may be deducted from payments that may be due and owing to the Contractor.

**§ 5.7** If the Contractor fails to perform its Services in accordance with the Design Schedule, the Town may, upon written notice, terminate this Agreement for cause as set forth in Article 6 of this Agreement.

## **ARTICLE 6: TERMINATION**

**§ 6.1 Termination for Cause.** Town shall have the right to terminate this Agreement upon seven (7) days' written notice should the Contractor fail to perform in accordance with its terms through no fault of Town. Failure to perform shall include but not be limited to the following:

- (a) For failure to perform the obligations as stipulated by this Agreement which are not remedied within a period of seven (7) calendar days after receipt of such notice from the Town;
- (b) For making an assignment for the benefit of creditors, or being bankrupt or insolvent, or filing any petition seeking dissolution and liquidation of its interests; or any other event shall have occurred which would have an effect comparable to any of the foregoing events;
- (c) For default upon the Town's opinion that the quality of the Services being provided are substantially below the level of quality that is considered to be acceptable in the construction industry for similar preconstruction Services.

In the event of termination of this Agreement for cause, the Contractor shall not be entitled to any payment for the Contractor's Services or out of pocket expenses. Contractor shall only be entitled to payment for Additional Services approved by written Change Order.



**§ 6.2 Termination for Convenience.** Town may terminate this Agreement upon seven (7) days' written notice for its convenience, without cause at any time. Any notice of termination for convenience will include an effective date of such termination. Contractor shall provide all required Services up to and including the stated Termination Date.

**§ 6.3** In the event of termination for convenience by Town or if Town does not proceed with Contractor as the general contractor for the Project, Contractor shall be compensated for all labor provided in performing the Services, plus out of pocket costs expended in performing the Services, up to and including the termination date, and Additional Services approved by written Change Order. All labor and costs must be fully supported with Contractor's invoices, records and other appropriate supporting documentation.

**§ 6.4** In the event of termination, with or without cause, the Contractor shall transfer to Town all work product and materials created in connection with performing the Services, and all associated rights and common law title to the work product generated as part of or associated with this Agreement.

**§ 6.5** In the event Contractor is terminated for cause, Contractor shall not be entitled to any compensation, fees, damages or costs of any nature, with the exception of Additional Services approved by written Change Order beyond the date of notice of termination.

**§ 6.6** Termination of the Agreement shall not prejudice nor affect the accrued rights or claims and liabilities of the Parties, except as provided herein this Agreement.

## **ARTICLE 7: CLAIMS AND DISPUTES**

### **§ 7.1 Claims**

**§ 7.1.1 Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the Town and Contractor arising out of or relating to the Agreement. The responsibility to substantiate Claims shall rest with the party making the Claim. Submittal of a request for Change Order shall not be considered notice of a Claim required by this Article.

**§ 7.1.2 Time Limits on Claims.** The Town and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Agreement in accordance with the requirements of the binding dispute resolution method selected in this Agreement, within the time period specified by applicable law, but in any case not more than ten (10) years after the date of completion of the Services. The Town and Contractor waive all claims and causes of action not commenced in accordance with this Article.



### § 7.1.3 Notice of Claims

§ 7.1.3.1 Prior to final payment, Claims by the Contractor for an increase in the Contract Price or the Contract Time must be initiated by written notice to the Town within five (5) days after occurrence of the event giving rise to such Claim.

§ 7.1.3.2 After final payment, Claims that have not otherwise been waived must be initiated by prompt written notice to the other party.

§ 7.1.4 Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Agreement and the Town shall continue to make payments in accordance with the Agreement.

§ 7.1.5 **Claims for Additional Cost.** If the Contractor intends to make a Claim for an increase in the Contract Price, written notice as provided herein shall be given before proceeding to execute the portion of the Services that relates to the Claim.

§ 7.1.6 **Claims for Additional Time.** If the Contractor intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Services. In the case of a continuing delay, only one Claim is necessary.

§ 7.1.7 **Claims for Consequential Damages.** The Contractor waives Claims against the Town for consequential damages arising out of or relating to this Agreement. This waiver includes damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Services. This waiver is applicable, without limitation, to all of Contractor's consequential damages due to the Town's termination in accordance with Article 6. Nothing contained in this Section shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Agreement.

### § 7.2 Dispute Resolution

§ 7.2.1 **Direct Discussions.** If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) business days of the date of the first discussion, the Parties' representatives shall immediately inform the Parties in writing that resolution was not affected. Upon receipt of such notice, the Parties shall meet within five (5) business days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) days from the date of first discussion, the Parties shall submit such matter to the Initial Decision Maker.





## **§ 7.2.2 Initial Decision**

**§ 7.2.2.1** Claims shall be referred to the Initial Decision Maker for initial decision. The Initial Decision Maker will be the Architect, unless otherwise indicated in the Agreement. An initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within thirty (30) days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation followed by litigation without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Town. Contractor must continue performing the Services when a Claim is pending before the Initial Decision Maker.

**§ 7.2.2.2** The Initial Decision Maker will review Claims and within ten (10) days of the receipt of a Claim and take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 7.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision.

**§ 7.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 7.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Price or Contract Time or both. The initial decision is not binding on the parties and is subject to mediation at the demand of either party and, if the parties fail to resolve their dispute through mediation, the initial decision is subject to litigation.

**§ 7.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 7.3.



### **§ 7.3 Mediation**

**§ 7.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Agreement except those waived shall be subject to mediation. Either party may, within thirty (30) days from the date of an initial decision, demand in writing that the other party mediate the Claim within sixty (60) days of the initial decision. If such a demand is made and the party receiving the demand fails to mediate the Claim within the time required, then both Parties waive their rights to mediate with respect to the initial decision, unless the Parties expressly agree in writing to another time period for mediation.

**§ 7.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of litigation.

**§ 7.3.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### **§ 7.4 Litigation**

**§ 7.4.1** Litigation of Claims, disputes or other matters in question between the Town and Contractor arising out of or relating to this Agreement or breach thereof, which are not resolved by mediation, shall be subject to and decided by litigation exclusively in the Florida state courts of the county in which the Project is located. Contractor and the Town consent to the venue of the Florida state courts of the county in which the Project is located, and specifically recognize and acknowledge the waiver of any right to remove any action to federal court on the basis of diversity jurisdiction or on any other basis.

**§ 7.4.2** In the event of any dispute arising out of or related to this Agreement, the prevailing party shall be entitled to recover the cost of such action including reasonable attorneys' fees and paralegal fees for all trial and appellate levels, to the extent applicable. In any suit, action, or other proceeding, including bankruptcy, arising out of or in any manner relating to the Agreement, including without limitation, (i) the enforcement or interpretation of a party's rights or obligations under the Agreement (whether in contract, tort, or both), or (ii) the declaration of any rights or obligations under the Agreement, the successful or prevailing party, as determined by the court, shall be entitled to recover from the losing party, as determined by the court, reasonable attorneys' fees, paralegal fees, and disbursements (including disbursements which would not otherwise be taxable as cost in the proceeding) and expert witness fees. All references in the Agreement to attorneys' fees shall be deemed to include all attorney and paralegal fees as well as through all post-judgment and appellate levels and in connection with collection, and bankruptcy proceedings.



In addition, the prevailing party shall be entitled to recover from the non-prevailing party, all litigation costs associated with discovery, processing, management, hosting, and production of Electronically Stored Information (“ESI”).

**§ 7.4.3 Waiver of Jury Trial.** THE TOWN AND CONTRACTOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE SERVICES OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY.

**§ 7.5** The provisions contained in this Article 7 shall survive the termination and/or expiration of this Agreement.

## **ARTICLE 8: INSURANCE**

**§ 8.1** The Contractor shall purchase and maintain the required insurance as set forth in **Exhibit B** to this Agreement, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and having an A.M. BEST’s rating of “A-X” or better.

**§ 8.2** The insurance required by this Article shall be the primary insurance (and non-contributory to any of the Town’s insurance) and shall be written for not less than limits of liability specified in the Agreement or required by law, whichever coverage is greater.

**§ 8.3** The Contractor shall not commence any Services under the Agreement until it has obtained all insurance required under this Agreement. The deductible on all insurance required of Contractor under this Article or the Agreement shall not exceed Ten Thousand Dollars (\$10,000.00) and shall in all events be paid by the Contractor.

**§ 8.4** Certificates of insurance and actual copies of the Insurance Policies in accordance with this Article shall be delivered to the Town prior to commencement of the Services and thereafter upon renewal, upon written request from Town. These certificates and the insurance policies required by this Article shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least sixty (60) days’ prior written notice has been given to the Town. Contractor shall not commence its performance of the Services and shall not be entitled to any payments under the Agreement until the required policies have been delivered to Town and reviewed by Town’s insurance professional and found to be in compliance with the Agreement.

**§ 8.5** Contractor’s failure to provide and maintain the insurance required by this Agreement shall be grounds for termination.

**§ 8.6 Indemnification.** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Town, its agents and employees (the “Indemnified Parties”) from liability, damages, losses and costs, including but not limited to, reasonable attorneys’ fees at both the



trial and appellate level, to the extent caused in whole or in part by any act, omission or default of the Contractor, subcontractors, sub-subcontractors, materialmen or agents of any tier, or their respective employees (the “Indemnitors”), arising from performance of the Services in connection with this Agreement. Notwithstanding the foregoing, Contractor’s indemnification hereunder shall not include claims of or damages resulting from the gross negligence, or willful, wanton or intentional misconduct of the Indemnified Parties, or for statutory violations or punitive damages, except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Indemnitors. In any and all claims against the Indemnified Parties by any employee of the Contractor, the indemnification obligation under this provision of the Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under Workmen’s Compensation Acts, Disability Benefit Acts, or other employee benefit acts. The terms of this provision shall survive termination of this Agreement.

## **ARTICLE 9: MISCELLANEOUS PROVISIONS**

**§ 9.1** Each party hereto acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and further agrees that it is the sole and exclusive and complete statement of the Agreement between the parties hereto and supersedes and merges all prior proposals, understandings, whether oral or written, relating to the subject matter hereof. The section headings in this Agreement are included for reference only and are not to be construed as a part of this Agreement.

**§ 9.2** This Agreement may not be modified except by a written instrument duly executed by the parties hereto. This Agreement and the performance hereunder shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its choice of law provisions. Any action between the parties to this Agreement arising under this Agreement shall be resolved by litigation brought in a court of competent jurisdiction in Miami-Dade County, Florida, and each party agrees to submit itself to the jurisdiction of said court.

**§ 9.3** Contractor is an independent contractor. Nothing in this Agreement is intended to create an agency relationship between Contractor and Town, or a partnership or Joint Venture between the parties. Nothing contained in this Agreement shall be deemed to create a contractual relationship with or a cause of action in favor of any third party against Town.

**§ 9.4** The Contractor and all consultants employed by the Contractor shall keep records of all expenditures made and all costs, liabilities and obligations incurred under this Agreement.

### **§ 9.5 Municipality-specific provisions**

**§ 9.5.1** To avoid any conflict of interest or any appearance thereof, Contractor 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.



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

**§ 9.5.3** 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.

**§ 9.5.4 Ownership and Access to Records and Audits.**

**§ 9.5.4.1** Contractor 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 Contractor during the term of this Agreement (“Work Product”) belong to the Town. Contractor 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).

**§ 9.5.4.2** Contractor agrees to keep and maintain public records in Contractor’s possession or control in connection with Contractor’s performance under this Agreement. The Town Manager or his designee shall, during the term of this Agreement and for a period of five (5) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Contractor involving transactions related to this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor 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.

**§ 9.5.4.3** Upon request from the Town’s custodian of public records, Contractor 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.

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

**§ 9.5.4.5** Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town’s information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and



all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

§ 9.5.4.6 Any compensation due to Contractor shall be withheld until all records are received as provided herein.

§ 9.5.4.7 Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

§ 9.5.4.8 Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: MAURICIO MELINU, CMC, TOWN CLERK, 10720 CARIBBEAN BOULEVARD, SUITE 105, CUTLER BAY, FL 33189, 305-234-4262, [MMELINU@CUTLERBAY-FL.GOV](mailto:MMELINU@CUTLERBAY-FL.GOV).**

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

§ 9.5.6 **Prohibition of Contingency Fees.** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, 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 Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

§ 9.5.7 **Public Entity Crimes Affidavit.** Contractor 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.

§ 9.5.8 **E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the Town requires all contractors 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 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 entering into this Agreement, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida



Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.

**§ 9.5.9 Non-Exclusive Agreement.** The Town reserves the right to procure or acquire similar services from another provider while this Agreement is in full force and effect.

**§ 9.5.10 Termination Due To Lack of Funding.** This Agreement is subject to the condition precedents that: (i) Town funds are available, appropriated and budgeted, for the Services annually for each year of the Term; (ii) the Town secures and obtains any necessary proceeds, grants or loans for the accomplishment of the Services pursuant to any borrowing legislation adopted by the Town Commission relative to the Services; and (iii) the Town Commission enacts legislation or other necessary resolutions, which awards and authorizes the execution of this Agreement and the annual appropriation and budgeting for the Services. The Town represents to Contractor that the Town has adopted a resolution authorizing execution of this Agreement, if required by applicable law.

**§ 9.5.11 Background Checks.** Prior to the execution of this Agreement, the Contractor shall furnish the Town with a copy of a screening and background check, including a criminal background check for Contractor, its officials, agents, employees or subcontractors providing Services under this Agreement. The Contractor shall be responsible for updating the Town in writing with any additions and deletions of the individuals authorized to provide Services under this Agreement. In the event that additional individuals are authorized to perform such Services, the Contractor shall furnish the Town with a copy of a screening and background check, including a criminal background check, prior to such individual commencing such Services. It shall be in the Town Manager's complete and sole discretion as to whether the type of check and the results are acceptable. If compliance with this section is required, the Town shall select this box: .

**§ 9.5.12 American Rescue Plan Act Provisions.** In connection with the performance of this Agreement, Contractor acknowledges that compensation for the Project services 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:

- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), as applicable and as may be amended from time to time;
- ii. The U.S. Department of the Treasury's Final Rule governing ARPA, dated January 27, 2022;
- 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, dated April 27, 2022;
- v. American Rescue Plan Act Coronavirus Local Fiscal Recovery Fund Agreement between the Town and the State of Florida, Division of Emergency Management dated September 28, 2021;
- vi. The U.S. Department of the Treasury’s ARPA Compliance and Reporting Guidance, dated June 17, 2022; and
- vii. Assurances of Compliance with Civil Rights Requirements.

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/government/page/arpa-documents>.

**§ 9.5.12.1 Title VI Requirements.** Contractor acknowledges that the Town has certified compliance with Title VI of the Civil Rights Act of 1964 to the U.S. Department of the Treasury on the form incorporated herein as ARPA Exhibit 7. Towards that end, Contractor shall ensure that performance of services in connection with this Agreement complies with the certifications and requirements contained in ARPA Exhibit 7 and shall also adhere to the following provisions:

- (1) The Contractor and its sub-contractors, 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.
- (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 services under this Agreement.

**§ 9.5.12.2 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.





**§ 9.5.12.3 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.

**§ 9.5.12.4 Protections for Whistleblowers.** 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.

§ 9.5.12.4.1 The list of persons and entities referenced in the paragraph above includes the following:

- i. A Member of Congress or a representative of a committee of Congress.
- ii. An Inspector General
- iii. The Government Accountability Office.
- iv. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- v. An authorized official of the Department of Justice or other law enforcement agency.
- vi. A court or grand jury.
- vii. 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.

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.

**§ 9.5.12.5 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”)].

**§ 9.5.12.6 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 services.



**§ 9.5.12.7 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.

**§ 9.5.12.8 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 by the U.S. Department of the Treasury.”

**§ 9.5.12.9 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.

**§ 9.5.12.10 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:

**§ 9.5.12.11 Equal Employment Opportunity Compliance.** During the performance of this Agreement, the Contractor agrees as follows:

- (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:
  - a. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising;
  - b. layoff or termination;
  - c. rates of pay or other forms of compensation; and
  - d. selection for training, including apprenticeship

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.



- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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.

**§ 9.5.12.12 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:

- .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.
- .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.
- .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.
- .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.

**§ 9.5.12.13 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:

- .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.
- .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.
- .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.

**§ 9.5.12.14 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:

- .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.
- .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.
- .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.

**§ 9.5.12.15 Debarment and Suspension Compliance.** During the performance of this Agreement, the Contractor warrants that Contractor or its subcontractor are not debarred, suspended, or otherwise ineligible for contract awards under Executive Orders 12549 and 12689. Contractor shall comply with the following provisions:

- .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).



- .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.
- .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.
- .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.
- .5 Contractor certifies that they:
  - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
  - ii. 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.
  - iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local); and
  - iv. 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.

**§ 9.5.12.16 Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352, as amended).** During the performance of this Agreement, the Contractor and its subcontractor 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:

- .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.
- .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.
  - .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.
  - .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.

**§ 9.5.12.17 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:

- .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.
- .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 subcontractor to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- .3 Breach. A breach of the contract clauses above may be grounds for termination of this Agreement, and for debarment as an Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**§ 9.5.12.18 Procurement of Recovered Materials.** Contractor shall comply with the provisions of 2 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>.

**§ 9.5.12.19 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."

**§ 9.5.12.20 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.

- .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 services ("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.
- .2 Contractor shall keep all Documentation up-to-date throughout the performance of this Agreement and the services. Contractor shall provide the Town with all Documentation for each fiscal year by October 1 of each year or when requested by the Town. 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.

## ARTICLE 10: SCOPE OF THE AGREEMENT

**§ 10.1** This Agreement is comprised of the following documents listed below:

- This Agreement
- Exhibit A – List of Key Employees
- Exhibit B – Insurance

[REMAINDER OF 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**

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

Town Resolution No.: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Mauricio Melinu  
Town Clerk

Approved as to form and legal sufficiency:

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

**Addresses for Notice:**

Town of Cutler Bay  
Attn: Town Manager  
10720 Caribbean Blvd., Suite 105  
Cutler Bay, FL 33189  
305-234-4262 (telephone)  
305-234-4251 (fax)  
RCasals@cutlerbay-fl.gov (email)

**With a copy to:**

Weiss Serota Helfman Cole & Bierman, P.L.  
Attn: Mitchell Bierman, Esq.  
Town Attorney  
2800 Ponce de Leon Boulevard, Suite 1200  
Coral Gables, FL 33134  
mbierman@wsh-law.com (email)

**CONTRACTOR**

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

Name: \_\_\_\_\_

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

Entity:

**Addresses for Notice:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (email)

**With a copy to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (email)

**[END OF DOCUMENT]**



## EXHIBIT A SCOPE OF SERVICES

The Construction services shall include, but not be limited to, the following:

A) Preconstruction Phase:

1) Preparation of Construction Estimates

The CF shall provide accurate analysis of the cost of all systems and construction contemplated for the Project over the course of this Agreement. The CF shall prepare preliminary estimates of the cost of the work and all required materials and final cost estimates for early procurement of long lead items and for all sequences of the construction work. It is expected that the CF will include, and document supporting data from various subcontractor and vendor sources as part of the estimating process.

Formal detailed estimates will be submitted based on the following design packages:

- a) Conceptual Design 100%
- b) Schematic Design 100%
- c) Design Development 100%
- d) Construction Documents 80%

There will also be various cost estimating exercises throughout part A of the Agreement above and beyond the formal exercises noted above. These exercises could include but are not limited to: detailed construction sequencing to allow for speed to market and material purchase savings, façade / building skin cost analysis and others.

It is important to note that many of the above noted cost estimates will need to be broken down by building component (i.e. – core and shell, fit-out, etc.) as well as by square foot costs for individual building programs (i.e. – lobbies, common space, pool, etc.).

2) Site / Job Site Logistics

CF shall review the specifications to ensure they provide all temporary facilities necessary for contractors to perform their work, as well as all job site facilities necessary for management, supervision, and inspection of construction.

The CF shall prepare Site Logistical Plans for each phase that indicate temporary facilities site access, barriers and other provisions related to life safety, and job-site security.

3) Review of Plans and Specifications

CF shall review all plans and specifications during the design phases, shall provide information about suitability of the materials selected, the availability of labor, time requirements for procurement and installation, construction, and relative costs of materials and shall provide recommendations for economies as appropriate.



- 4) Design Assist / Collaborative Project Delivery  
CF, in conjunction with the Project team, shall identify key trade partners to solicit for early design partner participation. Once the Design partner trades are identified, CF shall solicit proposals from an established list of approved partners. Once the Project team agrees upon the most qualified partner, the CF shall engage in a pre-construction contract with the chosen CF.
- 5) Target Value Design and Value Engineering  
CF shall actively participate in an on-going Target Value Design process with the Project team and various trades. On a regular basis the CF, in conjunction with the Design partners, will be expected to provide cost estimates and alternatives for all systems, equipment, and construction methods and material.
- 6) Technical Consultation  
CF and the Design partners shall participate with the Project team in the preparation of performance specifications and requests for technical proposals for the procurement and installation of building system components and for the procurement of long lead time equipment and materials. CF shall issue requests for technical proposals to qualified sources, receive such proposals, and assist in their evaluation. They shall formally advertise requests for procurement, if required, by assembling the required Contract Documents and issuing Invitations to Bid and shall be prepared to award these several contracts immediately upon Notice to Proceed with Part B of this Agreement.  
  
CF's technical consultation to Owner's Representative, Architect or other professional CFs shall not abrogate the design responsibility of those CFs. CF may make recommendations based upon the cost of a particular design or material selection; however, if such recommendations are accepted by the Owner and Architect for incorporation into the Project design, their suitability, with regard to structural stability and life safety, shall be the responsibility of the Design Team.
- 7) Long-Lead Procurement  
CF shall identify, recommend for purchase, and expedite the procurement of equipment, materials, and supplies, which require long lead-time. This log will identify critical shop drawings approval dates with allowable contractual response times for these submittals to ensure the Project sequencing is not interrupted.
- 8) Owner Supplied Equipment Requirements  
CF must complete a review of all the required equipment to be installed on the Project and identify all required components within the Project scope to be completed by the contractor. This review should not be limited to the construction documentation. Additionally, the CF must work with the Town and Stantec to identify all rough-in requirements and a date that Owner supplied equipment is required on the Project site to maintain the Project sequencing.
- 9) Construction Schedule  
The CF shall review, evaluate, and refine the preliminary construction schedule, in order to confirm or refine, the Owner's Master Project Schedule. The CF will prepare a detailed construction schedule that includes awards to any early



trades as required to ensure that a “fast track” construction schedule is maintained.

10) Preparation of the Subcontractor's List

The CF shall provide the Owner with a subcontractor list that is subject to input from the Owner for the various bid packages. This list should include subcontractors that have intimate knowledge of the available work force in the locality of the Project, documented financial viability, bonding capacity, and a preference to be based in the marketplace. This list will be cross-referenced with the Town's approved subcontractor list.

11) Preparation of Guaranteed Maximum Price

The CF shall prepare a final GMP for the entire construction project, that clearly summarizes the cost of each component of the Work based on the sum of the Construction Manager's estimate of the Cost of the Work, the Contingency, Allowances, and the Guaranteed Maximum Price Fee. The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents.

B) Construction Phase:

1) General

The CF shall coordinate the Project to develop an orderly, controlled construction effort in the agreed time frame. To discharge his responsibilities, the CF shall have a strong capability in engineering, budgeting, cost estimating, scheduling, purchasing, quality control, management, and labor relations. In addition, the CF shall have a record of successful performance in furnishing the specialized services required in the management of constructing park projects in a residential setting.

2) Project Safety

CF shall implement a comprehensive plan that integrates a culture of safety into the overall Project. It is expected that all CFs under consideration have a robust companywide safety program that can be tailored to this specific Project and has complete buy-in from all staff. The CF shall have a record of a successful program with proven results from previous projects.

3) Management Control System

CF shall implement an online management control system (“MCS”) accessible to the owner during the design and construction of the Project for use in achieving the objectives of the Project in a timely, economical, and acceptable manner. To this end, the MCS shall facilitate planning, organizing, scheduling, budgeting, reporting of construction progress, accounting, identifying variances and problems, and making decisions at all levels. CF shall provide the services, facilities, equipment, and staff necessary to implement the MCS. The MCS may be provided through a web-based project management system selected by the Owner, Stantec and Saltz Michelson. The CF will be responsible for keeping its information up to date in the web-based project management system. Using MCS, CF shall provide, over the course of this Agreement, the following for the review and approval of Owner:



- a) A preliminary construction logistics plan for review by the Town/Stantec.
- b) A preliminary construction schedule for review by the Town/Stantec.
- c) Final construction logistics plan for review by the Town/Stantec.
- d) Final construction schedule that integrates the various contractors' commitments into one complete and realistic schedule.
- e) A detailed equipment required on job site date list in conjunction with the Owners Representative for all Owner Furnished/ Contractor Installed Equipment
- f) An occupancy schedule prepared in conjunction with Owner's Representative, Stantec and Architect, Saltz Michelson

CF shall use the MCS during construction to:

- a) Periodically tabulate the cost of proposed changes in the Work, compare this current working estimate with the approved budget and identify possible Project cost overruns (savings).
- b) The proposed change tabulation must be flexible to allow for customization at the Owner or Stantec's request and must include the ability to provide aging (dunning) reports.
- c) All Cost Events that are in and out of scope will require review and approval by the Town/Stantec.
- d) Provide documentation of all changes made in the schedule and budget so that complete accountability between the original and the current approved schedule and budget is maintained.
- e) The MCS, when fully implemented, shall provide reports necessary for effective control of the overall construction program. Reports shall be provided to the levels of management in detail consistent with their requirements and responsibilities.
- f) Preparation of the Guaranteed Maximum Price.
- g) There will be a requirement to publish a Monthly Report at the end of each calendar month which will summarize the current Project status, critical issues, schedule tracking and a full summary of all costs on the Project including projected Cost Events in and out of the contracted scope. An update of this report will be provided by the GC at the monthly Town Council Meetings.

4) Accounting Records

Financial and cost accounting records shall be maintained for all costs applied to the Project. The CF shall be responsible for maintaining such records. The CF will provide an "open book" accounting type system throughout the course of the Project. Any significant line-item reallocation within the GMP shall receive owner's and Stantec's approval. The CF shall make available all contracts, books, documents, and records necessary to verify the nature and extent of the costs of the execution of the contract to all affiliated and regulatory agencies. Such inspection shall be available up to four years after completion of the contract.



5) General Contractor's Organization

CF shall provide to Owner an outline of the organization, including lines of authority required to complete the Project. A list of key personnel to be used on this Project shall be approved by the Owner and shall be attached to this Agreement as Exhibit "A". The CF shall make no substitution of any key personnel without the prior written consent of Owner. A request for substitution shall include a detailed justification of the change and the qualifications of any proposed replacement.

The services called for in this Agreement shall be performed by CF's own staff, unless otherwise authorized in writing by Owner. Owner's approval of the use of services of any person or firm by CF shall not be construed as constituting an Agreement between Owner and any such person or firm.

CF shall perform all services under this Agreement in a competent and efficient manner. Owner may require CF to remove from the Work any employee Owner deems incompetent, careless, or otherwise objectionable and to replace any such employee with suitable personnel.

CF shall prepare and distribute a field operation manual to facilitate the administration of this Agreement. The manual shall include the following data:

- a) Directory of Personnel
- b) Correspondence Format
- c) Report and Record Forms
- d) Inspection Procedures
- e) Shop Drawing Submission Identification Log
- f) Shop Drawing Submission Procedures
- g) Testing Laboratories Procedures
- h) Contract Change Procedures and Change Order
- i) Extension of Time Procedures
- j) Progress Payment Forms and Procedures
- k) Final Acceptance Procedures
- l) Additional Instructions
- m) Request for Information Format and Log
- n) Safety Procedures
- o) Conflicts of Interest
- p) Quality Control Procedures
- q) Labor Harmony Procedures
- r) List of Required Systems Shutdowns

CF shall conduct pre-construction conferences with successful bidders and shall schedule and conduct regular Project progress meetings to be attended by the trade contractors and representatives of Owner and Design Team to discuss procedures, progress, problems, schedule, and equal employment opportunity. CF shall prepare and distribute minutes of such meetings to those in attendance.



CF shall review and refine construction cost estimates as construction proceeds to incorporate approved changes in the Project in the Cost of the Work. CF shall advise Owner/Stantec and Design Team whenever construction costs differ from the costs set forth in the itemized Guaranteed Maximum Price.

CF shall establish and implement procedures for identifying all required shop drawings, catalogues, and samples and for expediting the processing and approval of these shop drawings, catalogues, and samples and the scheduling of materials.

6) Assembling of Bid Packages

Upon completion of the drawings for specific phases of the work, preparation shall be made for assembling the bidding documents into appropriate bidding packages. The number of separate bid packages or contracts shall be the determination of the CF in concert with the Town, Stantec and the Design Team. The CF shall assist the Project team in developing bid packages to minimize Owner allowances thereby reducing the Owner's financial risk. The CF will track a buy-out list, by trade, to identify savings/overruns.

7) Preparation of the Bidders List

The CF shall be responsible for the preparation of the bidders list with input and appraisal from the Owner and Stantec for the various bid packages. A focused effort to utilize local trades and subcontractors shall be considered whenever possible. The CF shall have intimate knowledge of the available work force in the locality of the Project and the experience to analyze the subcontracting firms that may have the ability, as well as an interest, in bidding the work. The Owner will provide a list of pre-approved sub-contractors and reserves the right to reject any of the sub-contractors presented by the CF.

8) Bid Receipt, Review, and Evaluation

The CF shall receive bids and, in concert with Stantec, the Design Team, and Owner, review and evaluate them. The bid opening for each trade will occur with the Owner and Stantec in attendance. If any trades are intended to be self-performed, they will go through the bid process.

9) Award of Trade Contracts

CF shall obtain bids for each trade contract from an appropriate number of qualified bidders that encourages the most reasonable price for acceptable work. In addition to price, the trades shall be evaluated for overall value and their ability to deliver the scope of work in a manner that is deemed most appropriate by the owner, CF, and Project Team. Engaging regional subcontractors and suppliers, while still utilizing the CF's national expertise and experience, is encouraged.

If the preferred bid for any bid package exceeds the CF budget line-item price, the CF shall propose various cost correcting options to the owner which include but are not limited to a negotiation with the bidder to reduce price, and a funding of the overage from other trade buyout savings, contingency or allowances.

CF shall submit for approval by Owner, a standard form of Trade Contractor Agreement and shall not deviate from this form without the written consent of Owner.



The Owner or his designated representative shall be responsible for approving awards of all trade contracts after evaluation of bids and recommendation by CF and Design Team. All factors including price, successful completion of projects with similar scope, presence in the local trade market, workforce availability as well as overall value will be considered by the Owner prior to approving awards. After approval is granted, CF shall award the separate contracts as required to provide all labor and materials for construction of the Project, including those parts of the Work which have been bid under Part A of the Agreement, and shall file a Change Order of each Agreement with Owner, prior to the commencement of that portion of the Work.

Each trade contract awarded by CF shall be a separate Agreement awarded based on competitive bids or negotiation if bidding is impractical. The relationship of CF to the trade contractor is the same as that of a general contractor to a subcontractor.

10) Project Closeout

CF shall identify all items of Work to be completed or corrected to conform to the Contract Documents ("Punch List") at the time of substantial completion of each phase of the Work. This shall be furnished to the Design Team and completed before a formal "Punch List" by the Architect.

CF shall determine, with concurrence of Owner, the amount of payment to be withheld from each trade contractor until Final Completion of each phase of the Work.

CF shall secure the consent of his/her surety and those of his/her trade contractors for a reduction in retainage or the remittance of Final Payment(s).

CF shall transmit to Owner's Representative all warranties, affidavits, receipts, releases, waivers, or bonds indemnifying Owner against liens.

CF shall consult with and make recommendations to Owner in connection with the inadequate performance of materials, systems and equipment during the warranty period; shall assist Owner in the inspection of the Work prior to the expiration of the warranty period to ascertain the adequacy of the performance of materials, systems and equipment; shall document defects or deficiencies discovered by Owner during the warranty period; and shall prepare instructions for the correction of noted defects.

CF shall be responsible for maintaining Project record drawings. At the appropriate time, near the end of the Project, CF shall forward to the Design Team, copies of the record drawings, Operations and Maintenance Manuals and other required turnover for review by the Design Team prior to final submission to the Owner for review. All documentation turned over by CF must be in the agreed format as requested by the Owner. The CF will not be able to draw down on the final 5% retainage for any sub-contractor until a turnover meeting for that specific trade has been completed with the Owner, reviewed by the Town's Maintenance Department, and agreed that all close-out requirements have been met.





**EXHIBIT B**  
**16-ACRES: LEGACY PARK AND MUNICIPAL COMPLEX**  
**EXECUTIVE SUMMARY**



**Link to Full Executive Summary:**

[https://www.cutlerbay-fl.gov/sites/default/files/fileattachments/community/page/9746/town\\_of\\_cutler\\_bay\\_legacy\\_park\\_and\\_municipal\\_complex\\_executive\\_summary.pdf](https://www.cutlerbay-fl.gov/sites/default/files/fileattachments/community/page/9746/town_of_cutler_bay_legacy_park_and_municipal_complex_executive_summary.pdf)



## Exhibit C DRAFT SCHEDULE

PHASE	MONTH
MASTER PLANNING & PROGRAMMING	May 2023
	June 2023
SCHEMATIC DESIGN	July 2023
	August 2023
DESIGN DEVELOPMENT	September 2023
	October 2023
CONSTRUCTION DOCUMENTS	November 2023
	December 2023
PERMITTING & FINALIZING GMP	January 2024
	February 2024
CONSTRUCTION	March 2024
	April 2024
	May 2024
	June 2024
	July 2024
	August 2024
	September 2024
	October 2024
	November 2024
	December 2024
	January 2025
	February 2025
	March 2025
	April 2025
	May 2025
	June 2025
	July 2025
	August 2025
	September 2025
	October 2025
CLOSE OUT	November 2025
	December 2025

## EXHIBIT D APPROVED MASTER PLAN (RESOLUTION NO. 23-68)

### MASTER PLAN ILLUSTRATIVE

### LEGACY PARK & MUNICIPAL COMPLEX

JUNE 23, 2023

#### LEGEND

- ① ICONIC FEATURE
- ② ART GARDEN
- ③ WETLAND (HEAD WATERS)
- ④ WATER FEATURE
- ⑤ LEGACY PARK SIGNAGE
- ⑥ OLD CUTLER ROAD TRAIL
- ⑦ TOWN HALL
- ⑧ POLICE STATION
- ⑨ PARKING GARAGE
- ⑩ COMMUNITY CENTER ARRIVAL
- ⑪ SWIMMING POOL DECK
- ⑫ COMMUNITY CENTER TERRACE
- ⑬ BERMED AMPHITHEATER
- ⑭ INTERACTIVE WATER FEATURE
- ⑮ FOOD TRUCK STAGING
- ⑯ WETLAND SYSTEM
- ⑰ WETLAND BOARDWALK
- ⑱ WETLAND LOOKOUTS
- ⑲ GOLF CART PARKING
- ⑳ POND
- ㉑ STAGE / EVENT PAVILION
- ㉒ OPEN LAWN
- ㉓ PICNIC AREA
- ㉔ EARTH BERMING
- ㉕ MARKET/EVENT SPACE
- ㉖ VITA TRAIL
- ㉗ EXISTING PUBLIX AND SHOPS
- ㉘ "TOT LOT" PLAY AREA



## CUTLER BAY LEGACY PARK



### Link to Full Master Plan Presentation:

<https://www.dropbox.com/sc/fi/dt7seihw5bw473qbzu40z/2023-07-04-Legacy-Park-Masterplan-Cutler-Bay.pdf?rlkey=imrraez6kj6nttmjls32v9qkv&dl=0>

Exhibit E  
Schematics

# CUTLER BAY LEGACY PARK

TOWN OF CUTLER BAY  
21161 OLD CUTLER ROAD  
CUTLER BAY FLORIDA, 33157

## PROGRESS SET: 2024/01/29 PRELIMINARY SCHEMATIC DESIGN

PROJ: SMA 2023-142

### TOWN COUNCIL

Tim Meerbott	Mayor
Michael P. Callahan	Vice Mayor
Robert "B.J." Duncan	Council Member 1
Suzy Lord	Council Member 2
Richard Ramirez	Council Member 3

#### Town manager

Rafael Casals

#### Town Clerk

Mauricio Melinu, CMC

#### Town attorney

Mitchell A. Bierman

#### OWNER'S REPRESENTATIVE

STANTEC Consultant Services Inc.

#### Senior Principal

Emma Jones, M Arch - Regional Director

### ARCHITECT OF RECORD



3501 GRIFFIN ROAD  
FORT LAUDERDALE, FL 33312  
T 954 266 2700

P.M. MONICA CAPELLUTO  
MCAPELLUTO@SALTZMICHELSON.COM

### DESIGN ARCHITECT MICHAEL GRAVES



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PRINCETON, NJ 08540

609 924 6409  
609 921 0129  
P.M. KYRIE MARTIN  
KMARTIN@MICHAELGRAVES.COM

### PARKING GARAGE THA CONSULTING

410 PEACHTREE PARKWAY  
CUMMING, GA 30041

770 850 3065

JAVIER SANCHEZ  
JSANCHEZ@THA-CONSULTING.COM



### LOW VOLTAGE HAMMOND & ASSOCIATES

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PLANTATION, FLORIDA 33317  
954 327 7111

NATE HAMMOND  
NATHANH@HAMMONDENGINEERS.COM



### TRAFFIC CONSULTANT CALTRAN GROUP

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MIAMI, FL 33126

786 456 7700

JUAN CALDERON  
JCALDERON@CALTRANGROUP.COM



### SIGNAGE CONSULTANT IMAGE RESOURCE GROUP

6750 N. ANDREWS AVE.  
CYPRESS PARK WEST, SUITE 200  
FORT LAUDERDALE, FL 33309  
803 360 1702

TIM GAMBLE  
TIM.GAMBLE@IRGPM.COM



### POOL/AQUATIC CONSULT. RESORT WATERSCAPES

2187 NW 24TH COURT  
MIAMI, FL 33142

305 588 9420

JOSEPH GABEL  
JGABEL@RSCAPES.COM

### LANDSCAPE DESIGN EDSA

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SUITE 110  
FORT LAUDERDALE, FL 33301  
954 524 3330

JACK GARCIA  
JGARCIA@EDSAPLAN.COM



### MEPFP ENGINEER L. J. AGUIRRE & ASSOC.

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SUITE 900  
MIAMI, FL 33156  
305 670 0141

MICHELLE MARTINEZ  
MMARTINEZ@LJAAPA.COM



### STRUCTURAL ENGINEER BNI ENGINEERS

5835 BLUE LAGOON DR #400  
MIAMI, FL 33126

305 442 7086

PAUL ZILIO  
P-ZILIO@BNIENGINEERS.COM



### CIVIL ENGINEER CHEN MOORE & ASSOC.

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SUITE 600  
FORT LAUDERDALE, FL 33309  
954 730 0707

PATRICK KAIMRAJH  
PKAIMRAJH@CHENMOORE.COM



### LEED CONSULTANT SPS

1805 S. POWERLINE ROAD  
SUTIE 107  
DEERFIELD BEACH, FL 33442  
888 344 3726

LARRY CLARK  
LARRY@SUSTAINFLORIDA.COM



# Exhibit E Schematics

## LEGEND

- |                         |                             |                       |                             |
|-------------------------|-----------------------------|-----------------------|-----------------------------|
| ① WETLAND (HEAD WATERS) | ⑧ COMMUNITY CENTER ARRIVAL  | ⑮ "TOT LOT" PLAY AREA | ⑳ STAGE / EVENT PAVILION    |
| ② WATER FEATURE         | ⑨ SWIMMING POOL DECK        | ⑯ FOOD TRUCK STAGING  | ㉑ OPEN LAWN                 |
| ③ LEGACY PARK SIGNAGE   | ⑩ COMMUNITY CENTER          | ⑰ WETLAND SYSTEM      | ㉒ PICNIC AREA               |
| ④ OLD CUTLER ROAD TRAIL | ⑪ POOL FACILITY             | ⑱ WETLAND BOARDWALK   | ㉓ EARTH BERMING             |
| ⑤ TOWN HALL             | ⑫ TERRACE                   | ㉒ WETLAND LOOKOUTS    | ㉔ MARKET / EVENT SPACE      |
| ⑥ POLICE STATION        | ⑬ BERMED AMPHITHEATER       | ㉓ GOLF CART PARKING   | ㉕ VITA TRAIL                |
| ⑦ PARKING GARAGE        | ⑭ INTERACTIVE WATER FEATURE | ㉔ POND                | ㉖ EXISTING PUBLIX AND SHOPS |



SALTZ MICHELSON ARCHITECTS  
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saltzmichelson.com

DESIGN ARCHITECT  
MICHAEL GRAVES  
241 MASSAU STREET  
PRINCETON, NJ 08540  
609 924 6409



LANDSCAPE DESIGN  
EDSA  
1512 EAST BROWARD BOULEVARD  
SUITE 110  
954 524 3330

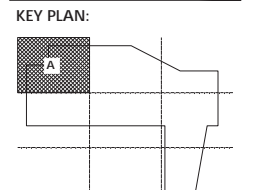


NOT FOR  
CONSTRUCTION

JEFF SUITER  
LA 6666932

CUTLER BAY  
LEGACY PARK  
TOWN OF CUTLER BAY  
21131 OLD CUTLER ROAD  
CUTLER BAY FLORIDA, 33157  
PROJECT: MGA 22307 | SMA 2023-142

Δ	DATE	DESCRIPTION



SHEET NAME:  
**OVERALL  
MASTER PLAN**

ORIG SUBMISSION: 2024.01.29  
CURRENT: PROGRESS  
SCALE: 1" = 60'  
0 60 120'

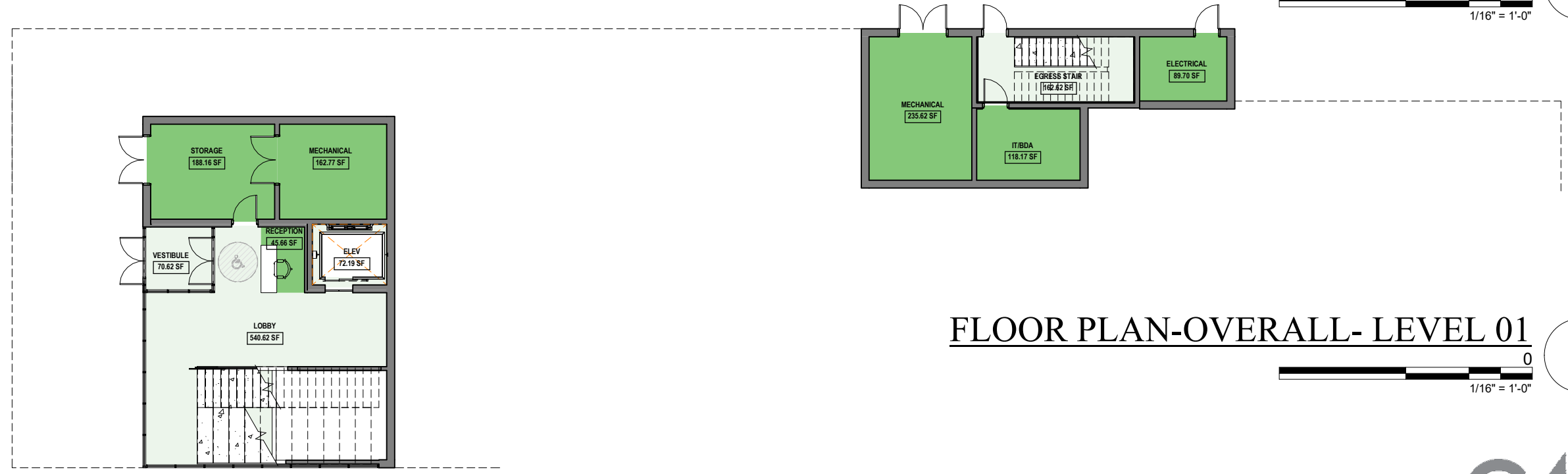
SHEET:  
**LO-1-01 61**

Exhibit E  
 Schematics



TOTAL COMMUNITY CENTER SQUARE FOOTAGE - 14,113 SF

FLOOR PLAN-OVERALL- LEVEL 02 2  
 1/16" = 1'-0"



FLOOR PLAN-OVERALL- LEVEL 01 1  
 1/16" = 1'-0"

Programming

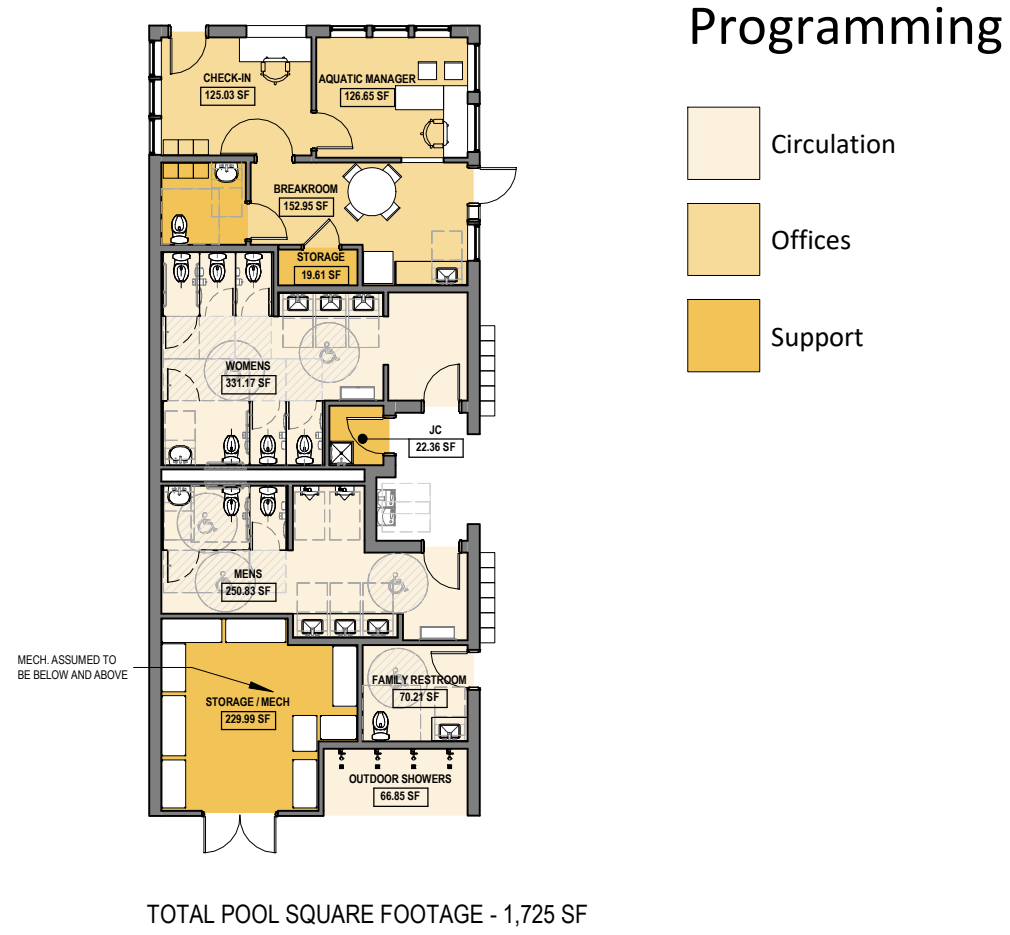
- Circulation
- Meeting/Assembly
- Offices
- Support

**A1-00 FLOOR PLAN- LEVEL 01 & 02**

MICHAEL  
 GRAVES



# Exhibit E Schematics



FLOOR PLAN-OVERALL- LEVEL 02



## A1-02 FLOOR PLAN- LEVEL 02

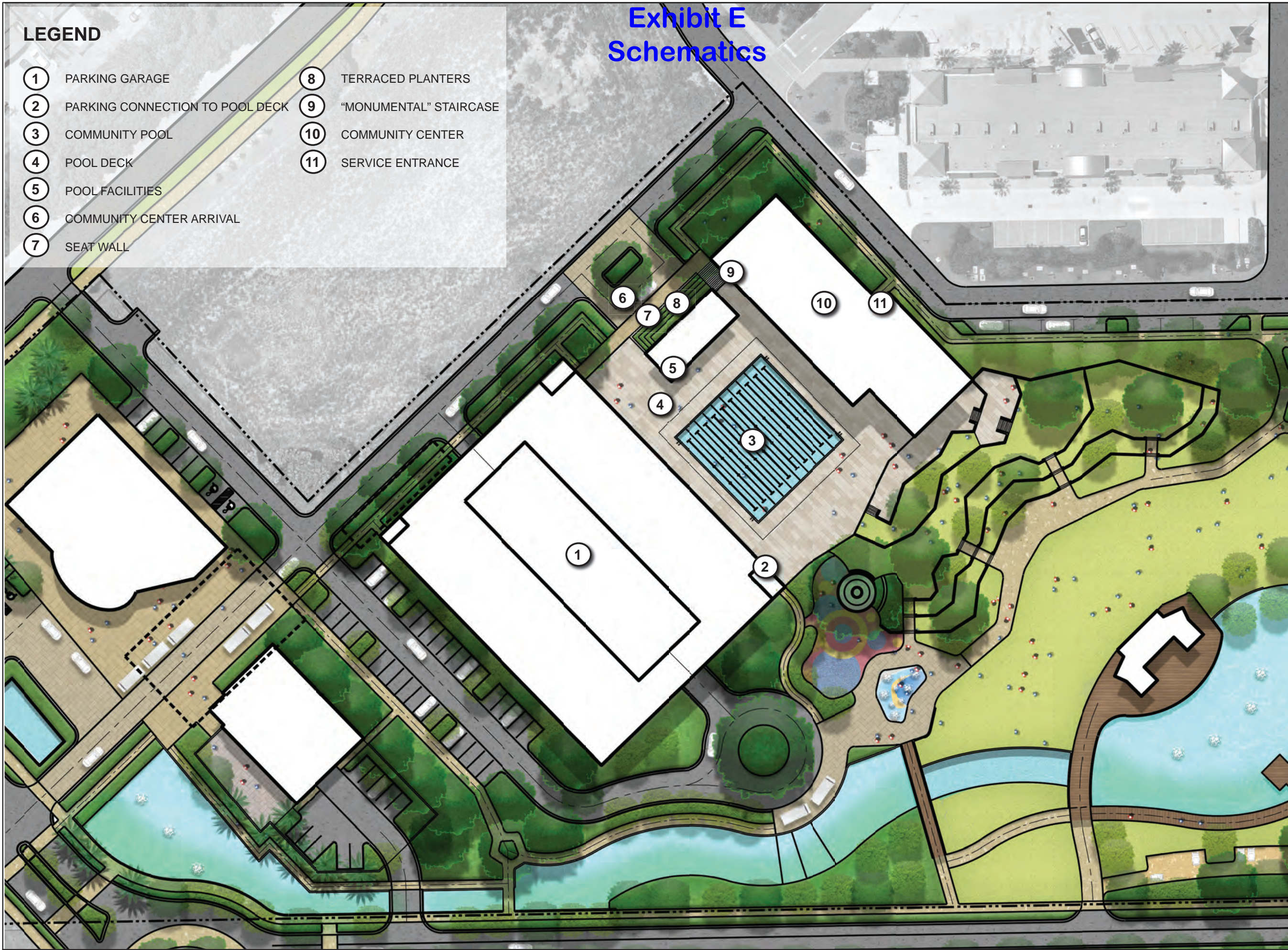
MICHAEL  
GRAVES

SALTZ  
MICHELSON  
ARCHITECTS

# Exhibit E Schematics

## LEGEND

- ① PARKING GARAGE
- ② PARKING CONNECTION TO POOL DECK
- ③ COMMUNITY POOL
- ④ POOL DECK
- ⑤ POOL FACILITIES
- ⑥ COMMUNITY CENTER ARRIVAL
- ⑦ SEAT WALL
- ⑧ TERRACED PLANTERS
- ⑨ "MONUMENTAL" STAIRCASE
- ⑩ COMMUNITY CENTER
- ⑪ SERVICE ENTRANCE



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**DESIGN ARCHITECT**  
 MICHAEL GRAVES  
 241 NASSAU STREET  
 PRINCETON, NJ 08540  
 609 924 6409

**MICHAEL GRAVES**

**LANDSCAPE DESIGN**  
 ED SA  
 1512 EAST BROWARD BOULEVARD  
 SUITE 110  
 954 524 3330

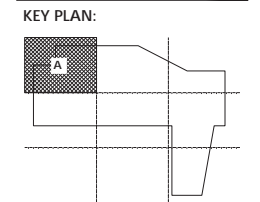


NOT FOR  
CONSTRUCTION

JEFF SUITER  
 LA 6666932

**CUTLER BAY  
 LEGACY PARK**  
**TOWN OF CUTLER BAY**  
 21131 OLD CUTLER ROAD  
 CUTLER BAY FLORIDA, 33157  
 PROJECT: MGA 22307 | SMA 2023-142

Δ	DATE	DESCRIPTION



SHEET NAME:  
**COMMUNITY CENTER  
 ENLARGEMENT**

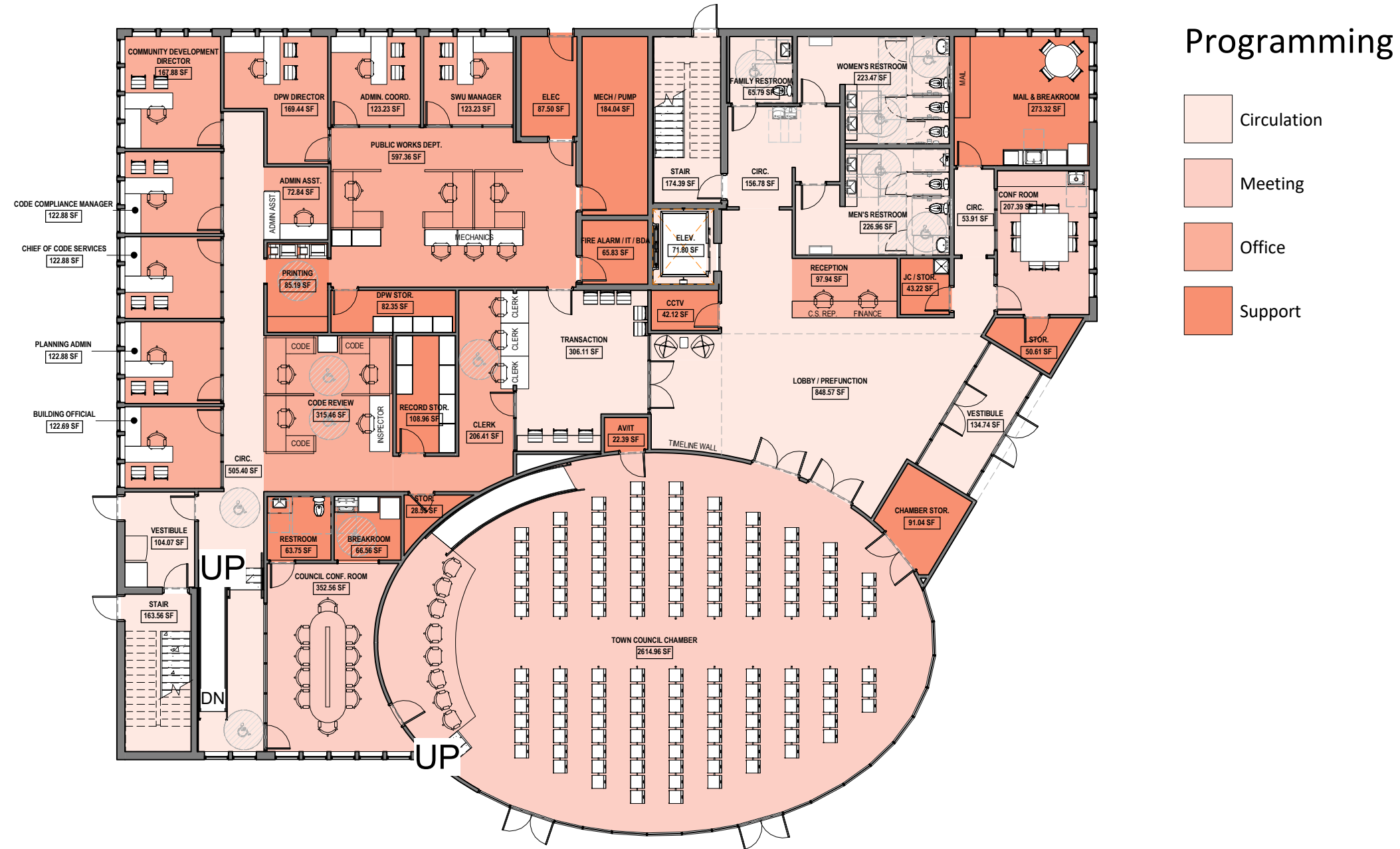
ORIG SUBMISSION: 2024.01.29  
 CURRENT: PROGRESS



SHEET:  
**L3-1-01 64**



# Exhibit E Schematics



## Programming

- Circulation
- Meeting
- Office
- Support

TOTAL TOWN HALL GROSS SQUARE FOOTAGE - 17,983 SF

## FLOOR PLAN-OVERALL- LEVEL 01

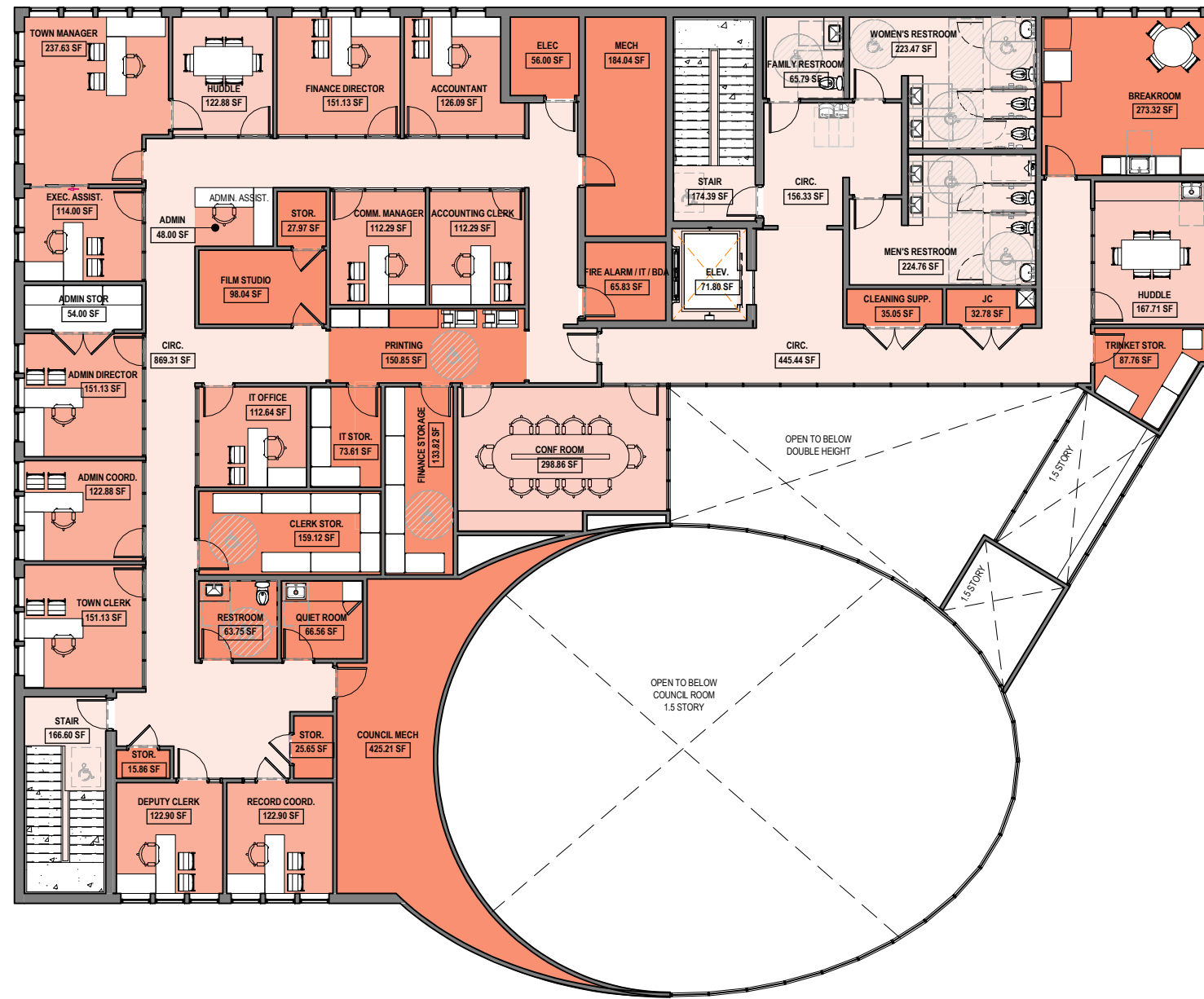


### A1-01 FLOOR PLAN- LEVEL 01

**MICHAEL  
GRAVES**



# Exhibit E Schematics

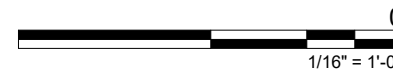


## Programming

- Circulation
- Meeting
- Office
- Support

TOTAL TOWN HALL GROSS SQUARE FOOTAGE - 17,983 SF

FLOOR PLAN-OVERALL- LEVEL 02



A1

MICHAEL  
GRAVES

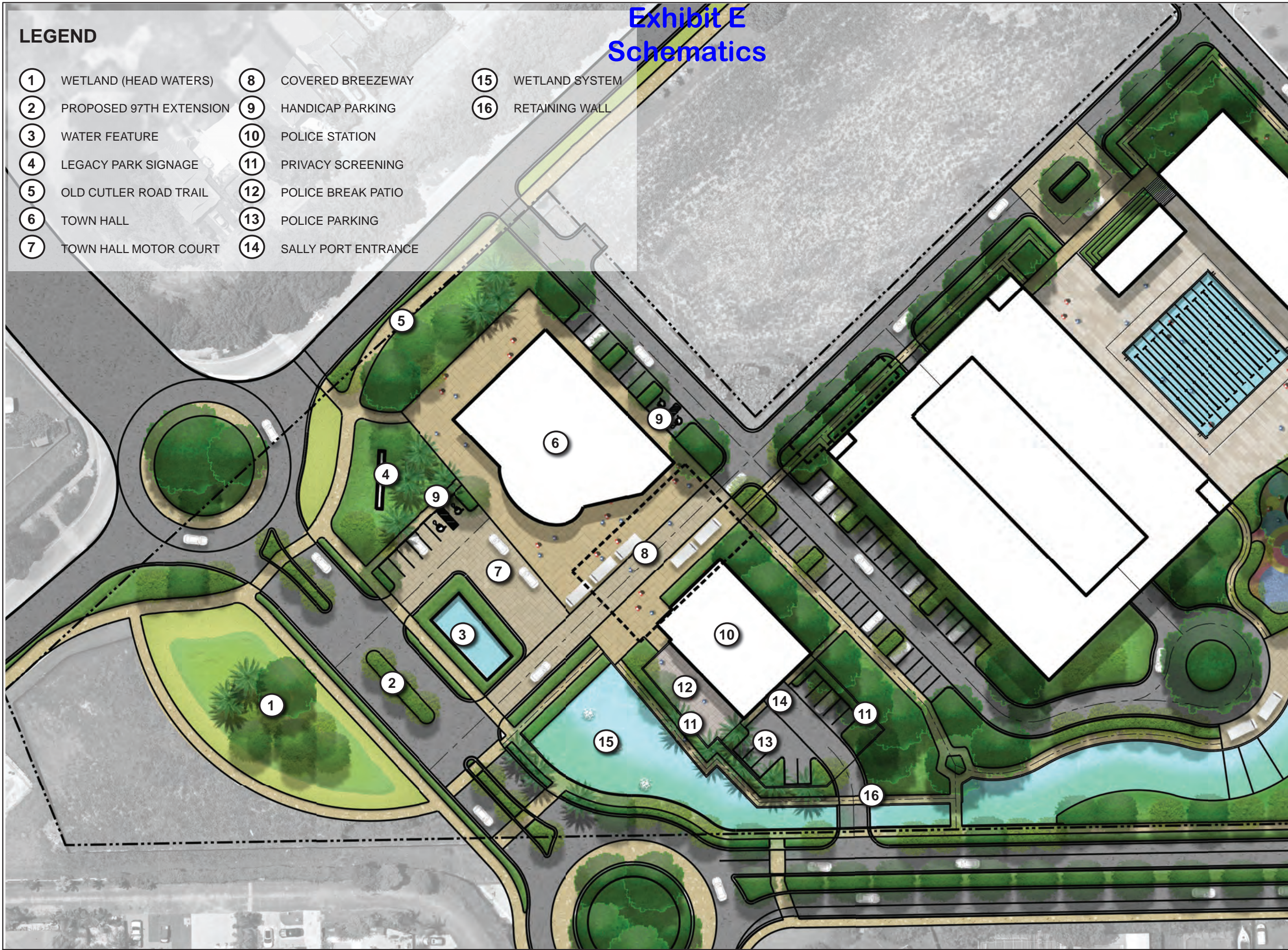
**A1-02 FLOOR PLAN- LEVEL 02**



# Exhibit E Schematics

## LEGEND

- |                           |                       |                  |
|---------------------------|-----------------------|------------------|
| ① WETLAND (HEAD WATERS)   | ⑧ COVERED BREEZEWAY   | ⑮ WETLAND SYSTEM |
| ② PROPOSED 97TH EXTENSION | ⑨ HANDICAP PARKING    | ⑯ RETAINING WALL |
| ③ WATER FEATURE           | ⑩ POLICE STATION      |                  |
| ④ LEGACY PARK SIGNAGE     | ⑪ PRIVACY SCREENING   |                  |
| ⑤ OLD CUTLER ROAD TRAIL   | ⑫ POLICE BREAK PATIO  |                  |
| ⑥ TOWN HALL               | ⑬ POLICE PARKING      |                  |
| ⑦ TOWN HALL MOTOR COURT   | ⑭ SALLY PORT ENTRANCE |                  |



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 saltzmichelson.com

**DESIGN ARCHITECT**  
 MICHAEL GRAVES  
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 PRINCETON, NJ 08540  
 609 924 6409

**LANDSCAPE DESIGN**  
 ED SA  
 1512 EAST BROWARD BOULEVARD  
 SUITE 110  
 954 524 3330

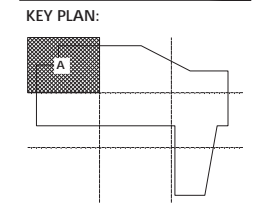
**MICHAEL GRAVES**



JEFF SUITER  
 LA 6666932

**CUTLER BAY LEGACY PARK**  
**TOWN OF CUTLER BAY**  
 21131 OLD CUTLER ROAD  
 CUTLER BAY FLORIDA, 33157  
 PROJECT: MGA 22307 | SMA 2023-142

Δ	DATE	DESCRIPTION



SHEET NAME:  
**POLICE / TOWN HALL ENLARGEMENT**

ORIG SUBMISSION: 2024.01.29  
 CURRENT: PROGRESS

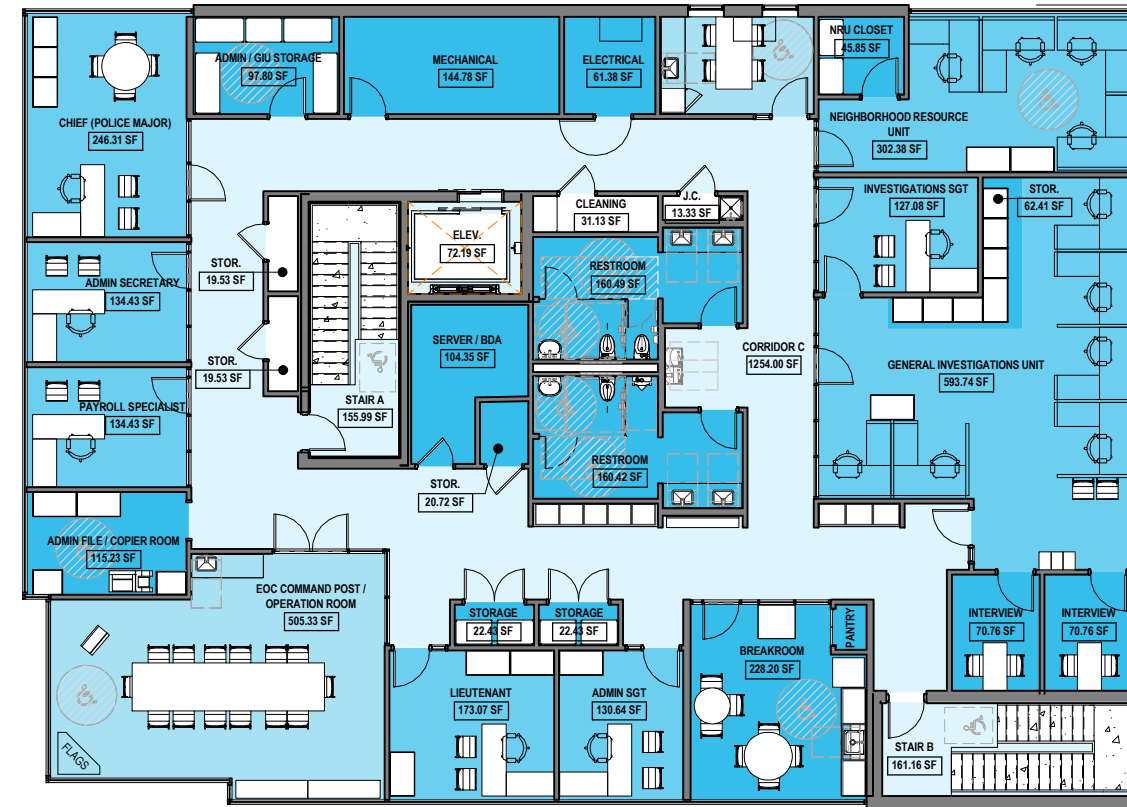
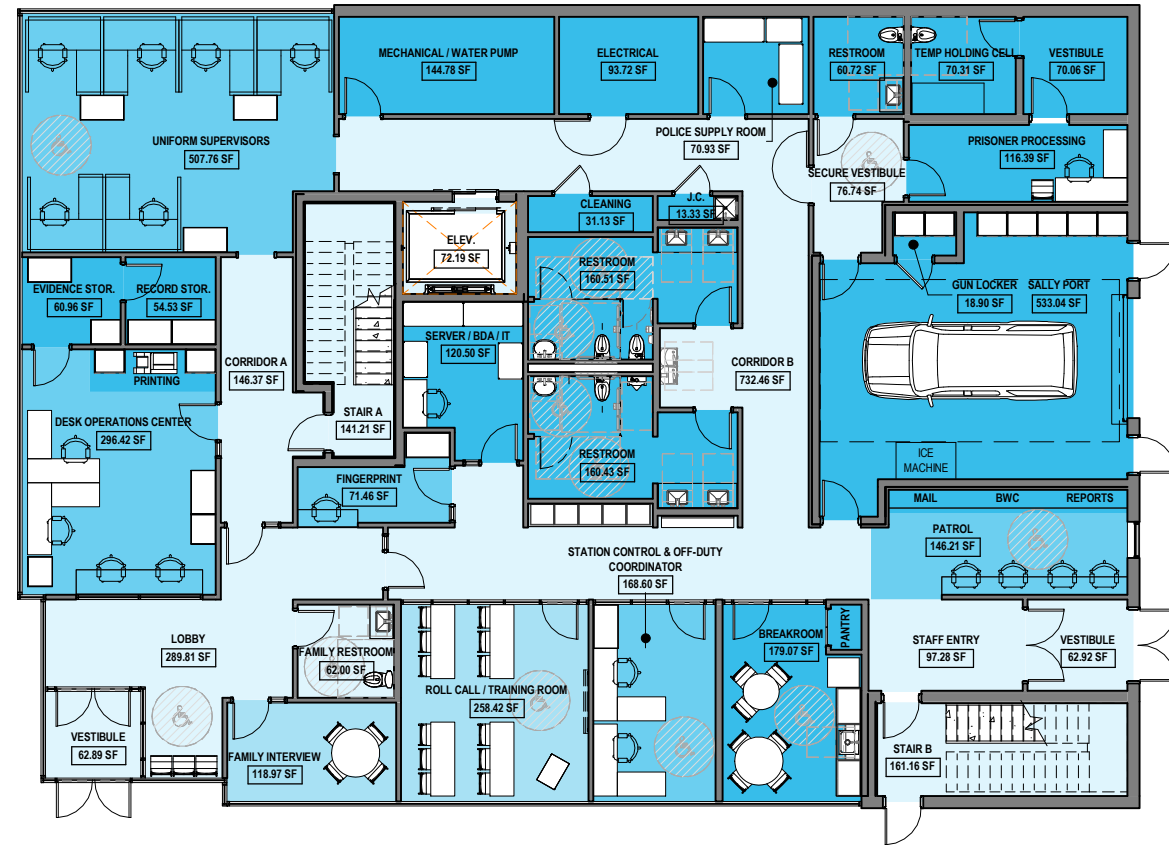


SHEET:  
**L2-1-01 67**

# Exhibit E Schematics

## Programming

- Circulation
- Meeting
- Offices
- Support



TOTAL POLICE GROSS SQUARE FOOTAGE - 11,898 SF

### A1-00 FLOOR PLAN- LEVEL 01 & LEVEL 02

**MICHAEL  
GRAVES**



# Exhibit E Schematics

## LEGEND

- ① PARKING GARAGE ENTRY
- ② WETLAND SYSTEM
- ③ FOOD TRUCK STAGING
- ④ INTERACTIVE WATER FEATURE
- ⑤ BUFFER PLANTING
- ⑥ "TOT-LOT"
- ⑦ CLIMBING STRUCTURE
- ⑧ STAIRS TO AMPHITHEATER
- ⑨ PEDESTRIAN BRIDGE



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 MICHAEL GRAVES  
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 PRINCETON, NJ 08540  
 609 924 6409

**MICHAEL GRAVES**

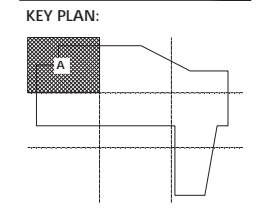
**LANDSCAPE DESIGN**  
 ED SA  
 1512 EAST BROWARD BOULEVARD  
 SUITE 110  
 954 524 3330



JEFF SUITER  
 LA 6666932

**CUTLER BAY LEGACY PARK**  
**TOWN OF CUTLER BAY**  
 21131 OLD CUTLER ROAD  
 CUTLER BAY FLORIDA, 33157  
 PROJECT: MGA 22307 | SMA 2023-142

Δ	DATE	DESCRIPTION



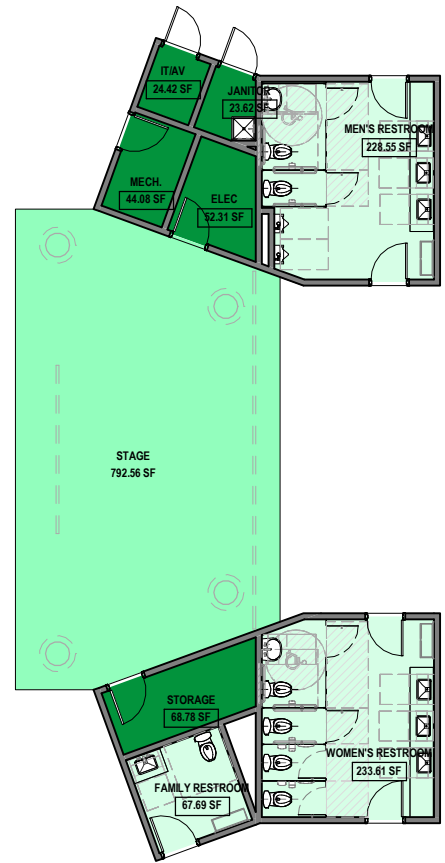
SHEET NAME:  
**TOT-LOT ENLARGEMENT**

ORIG SUBMISSION: 2024.01.29  
 CURRENT: PROGRESS



SHEET:  
**L4-1-01 69**

# Exhibit E Schematics

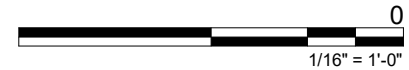


## Programming

- Circulation
- Meeting
- Support

TOTAL PAVILION SQUARE FOOTAGE - 1,676 SF

FLOOR PLAN-OVERALL- LEVEL 01



A1

**MICHAEL  
GRAVES**

**A1-01 FLOOR PLAN- LEVEL 01**



# Exhibit E Schematics

## LEGEND

- |                             |                             |                        |
|-----------------------------|-----------------------------|------------------------|
| ① PARKING GARAGE ENTRY      | ⑧ COMMUNITY CENTER TERRACE  | ⑮ OPEN LAWN            |
| ② FOOD TRUCK STAGING        | ⑨ STAGE / EVENT PAVILION    | ⑯ PICNIC AREA          |
| ③ RETAINING WALL            | ⑩ WETLAND BOARDWALK         | ⑰ EARTH BERMING        |
| ④ WETLAND SYSTEM            | ⑪ VEHICULAR ACCESS TO STAGE | ⑱ MARKET / EVENT SPACE |
| ⑤ INTERACTIVE WATER FEATURE | ⑫ WETLAND LOOKOUTS          | ⑲ PARALLEL PARKING     |
| ⑥ "TOT LOT"                 | ⑬ POND                      | ⑳ VITA TRAIL           |
| ⑦ BERMED AMPHITHEATER       | ⑭ GOLF CART PARKING         |                        |



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**MICHAEL GRAVES**  
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 PRINCETON, NJ 08540  
 609 924 6409

LANDSCAPE DESIGN  
**EDSA**  
 1512 EAST BROWARD BOULEVARD  
 SUITE 110  
 954 524 3330

**MICHAEL GRAVES**

**edso**

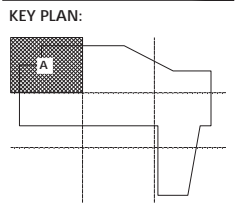


JEFF SUITER  
 LA 6666932

**CUTLER BAY  
 LEGACY PARK**

**TOWN OF CUTLER BAY**  
 21131 OLD CUTLER ROAD  
 CUTLER BAY FLORIDA, 33157  
 PROJECT: MGA 22307 | SMA 2023-142

Δ	DATE	DESCRIPTION



SHEET NAME:  
**PARK  
 ENLARGEMENT**

ORIG SUBMISSION: 2024.01.29  
 CURRENT: PROGRESS

SCALE: 1" = 40'

SHEET:  
**L5-1-01 71**