

## **PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT is made as of this \_\_\_\_ day of \_\_\_\_\_, 2016, between the City of Coral Gables (hereinafter called the City"), and M.C Harry & Associates, Inc. (hereinafter called the "Professional").

### **RECITALS**

**WHEREAS**, City desires to enter into an agreement with the Professional to provide basic architectural and engineering design to the City; and

**WHEREAS**, the City having investigated the qualifications of the Professional to perform the services herein contemplated and found those qualifications satisfactory; and

**WHEREAS**, the Professional having examined the scope of the services required hereunder and having expressed desire and willingness to provide such services and having presented qualifications to the City in support of those expressed desires; and

**WHEREAS**, the Professional agrees to accept this Agreement upon the terms and conditions hereinafter set forth; and

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants herein contained, the City agrees to retain the Professional to provide architectural design services to the City.

### **I. GENERAL PROVISIONS**

This Agreement incorporates and supersedes all previous agreements, written and oral, and all prior and contemporaneous communications between the parties, regarding this subject. The City reserves the right to initiate change to any provision of this Agreement. All such changes shall be accomplished only by mutually signed Amendments.

The Professional shall perform the services as specifically stated in the Scope of Services, which is attached hereto and incorporated herein as Exhibit A, and as may be specifically designated and authorized by the City.

The professional shall perform the services as specifically stated in the Scope of Services, which is attached hereto and incorporated herein as Exhibit A, and as may be specifically designed and authorized by the City.

1.1 Engagement. The City agrees to engage the Professional for a period specified in paragraph 1.2, and the Professional agrees to accept such engagement and to

perform such services for the City upon the terms, and subject to the conditions set forth herein.

1.2 Agreement Period. The terms of the Agreement (the "Professional Period") shall commence within ten (10) days of the execution date of the agreement and shall continue thereafter for a period not to exceed Two (2) year or until terminated by the City upon 30 days written notice to the Professional, in accordance with the notice requirements contained in Section XIII. However, this period may be extended at the sole discretion of the City for One (1) additional, Two (2) years period.

1.3 Duties and Responsibilities/Priority of Interpretation. The Code and any City resolutions take precedence over this agreement and its exhibits. This document without exhibits is referred to as the "Base Agreement." In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, service, or other work, or otherwise, between the Base Agreement and the exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the body of this Base Agreement and then to the exhibits according to the following priority :

- a) Professional's Response to RFQ – Exhibit B
- b) City Resolution and applicable Code provisions;
- c) City Request for Qualifications (RFQ) – Exhibit A
- d) Cost Summary / Pricing Schedule – Exhibit C
- e) Insurance Certificates
- f) Professional 's Exceptions to Terms and Conditions

1.3.1 The City shall be responsible for the following:

1. Assigning a City Project Manager to be the point of contact for the professional.
2. Establishing the budget and priority of the scope of work for each assignment.
3. Providing the professional all relevant information testing or data or providing for a means to the professional to procure the required data to complete the scope of services.
4. Provide direction and authorization to proceed so that the scope of service can be complete in a timely manner.

1.4 Driver's License. At City's option, the Professional must provide a valid Florida Driver's License or appropriate commercial driver's license for each employee, agent or subconsultant and be willing and able to operate any required vehicles as authorized by the City. Evidence of compliance with the Defensive Driving Course must be submitted to the City prior to operating a City vehicle or any vehicle where patrons or children are passengers. Individuals must be approved by the Risk Management Division of the City prior to the operation of a City owned vehicle and/or privately owned vehicles while conducting City business. The City reserves the right to request the

employee/agent's driving record from the State of Florida, at Professional's (contractor's) expense.

1.5 Confidential Information. The Professional agrees that any information received by the Professional for the City and in providing services in accordance with this Agreement which is not publicly available, shall not be revealed to any other persons, firm or organizations.

1.6 Most Favored Public Entity. The Professional represents that the prices charged to City in this Agreement do not exceed existing prices to other customers for the same or substantially similar items or services for comparable quantities under similar terms and conditions. If Professional's prices decline, or should Professional, at any time during the term of this Agreement, provide the same goods or services to any other customer at prices below those set forth herein, then such lower prices shall be immediately extended to the City.

## **II. PROFESSIONAL SERVICES**

2.1 Basic Services. The duties and responsibilities are outlined in Section 1.3.

2.2 Reporting. The Professional shall comply with the necessary reporting requirements as outlined by the Director or designee for review. In addition, the Professional shall submit a monthly report to the Director or designee, which shall include detailed information regarding the activities of the Professional during the previous month.

2.3 Availability of Professional. The Professional shall make all documents available 24 hours a day, 7 days a week, 365 days a year, in order to satisfy the City's emergency demands for continued, non-interrupted service.

## **III. COMPENSATION**

3.1 Basic Compensation. In full consideration of the services of the Professional hereunder, the Professional shall be paid at a rate stipulated for each of the services described on the RFQ pricing schedule ( Exhibit C), attached The City reserves the right to contract with the Professional for additional services. The Consultant agrees to negotiate a "Not to Exceed" fixed sum fee for each work order based on the Scope of Work. Work assigned under this continuing contract will not exceed \$2,000,000 for construction or \$200,000 for a study pursuant to Florida Statute 287.055, the Consultants Competitive Negotiation Act".

3.2 Expenses. As part of, and in addition to the basic compensation described in this Agreement, the City shall provide the Professional with no additional compensation for any services performed in fulfilling the requirements of this Agreement. All additional requested expenses must be pre-approved through the Director or designee.

#### **IV. INDEPENDENT CONTRACTOR AND PROFESSIONAL HOLD HARMLESS PROVISIONS**

4.1 Independent Contractor and Professional. The Professional acknowledges entering into this Agreement as an independent Contractor and Professional, and that the Professional shall therefore be responsible for the deposit and payment of any Federal Income Taxes, FICA, Unemployment Taxes or any similar fees or taxes that become due, and shall be responsible for the collection and payment of all withholdings, contributions and payroll taxes relating to Professional's services, or those of employees of the Professional. The City shall not withhold from sums payable to the Professional, any amount whatsoever for Federal Income Taxes, FICA, Unemployment Insurance Taxes or any similar fees or taxes. The Professional, their employees or agents, will not be considered an employee of the City or entitled to participate in plans, distributions, arrangements or other benefits extended to City employees.

4.2 Agency. Nothing herein shall imply or shall be deemed to imply an agency relationship between the City and Professional.

4.2.1 Professional warrants that it fully complies with all Federal statutes and regulations regarding the employment of undocumented workers and others and that all employees performing work under this Agreement meet the citizenship or immigration status requirements set forth in Federal statutes and regulations. Professional shall indemnify, defend, and hold harmless City, its officers and employees from and against any sanctions and any other liability which may be assessed against Professional or City in connection with any alleged violation of any Federal statutes or regulations pertaining to the eligibility for employment of any persons performing work hereunder.

4.2.2 The employees and agents of each party, shall while on the premises of the other party, comply with all rules and regulations of the premises, including, but not limited to, security requirements.

4.2.3 Indemnification and Hold Harmless. To the fullest extent permitted by laws and regulations, the professional shall defend , indemnify , and hold harmless the City, its' elected and appointed officials, attorneys, administrators, consultants, agents, and employees from liabilities, damages, losses and costs, including , but not limited to reasonable attorney fees, to the extent caused by negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the design professional in the performance of the contract, any of them may be deemed liable , by court competent. Any failure of Professional to comply with the terms of this provision shall be deemed a material breach of this Agreement and may subject Professional to debarment from consideration for future award of city contracts pursuant to Section 2-952(4) of the City of Coral Gables Code of Ordinances. This provision shall survive termination of the Agreement. Pursuant to section 558.0035(1)(c) of Florida Statutes, an individual employee of Firm , or any of its subconsultants may not be held liable for negligence.

4.2.4 Moreover, nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes, case law, or any other source of law.

## V. INSURANCE

5.1 Pursuant to the City of Coral Gables Code, Section 2-1007, the Risk Management Division of the Human Resources Department has developed the following insurance requirements to protect the City of Coral Gables to the maximum extent feasible against any and all claims that could significantly affect the ability of the City to continue to fulfill its obligations and responsibilities to the taxpayers and the public. Consequently, prior to commencing work, the Professional shall procure, and provide the City with evidence of insurance coverage as required herein and name the City as an Additional Insured on a primary and non-contributory basis. The Professional shall secure and maintain, at its own expense, and keep in effect during the full period of the contract a policy or policies of insurance, and must submit these documents to the Risk Management Division of Human Resources Department for review and approval.

5.2 Insurer Requirements. The Professional shall maintain, at its own cost and expense, the following types and amounts of insurance with insurers with rating of "A-" "VI" or better according to the A.M. Best rating guide as a minimum standard. The insurers providing coverage must be approved by the State of Florida and hold all of the required licenses in good standing to conduct business within the State of Florida. In addition, they must be acceptable to the City of Coral Gables Risk Management Division and/or the City Attorney's Office.

### 5.3 Type of Coverage & Limit of Liability Requirement.

**Workers' Compensation and Employers Liability Insurance** covering all employees, sub consultants, and/or volunteers of the Professional and/or Vendor engaged in the performance of the scope of work associated with this contract and/or agreement. The minimum limits of liability shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation insurance, with the following limits:

Workers' Compensation - Coverage A  
Statutory Limits (State of Florida or Federal Act)

Employers' Liability - Coverage B  
\$1,000,000 Limit - Each Accident  
\$1,000,000 Limit - Disease each Employee  
\$1,000,000 Limit - Disease Policy Limit

**Commercial General Liability Insurance** written on an occurrence basis including, but not limited to; Coverage for contractual liability, products

and completed operations, personal & advertising injury, bodily injury and property damage liabilities with limits of liability no less than:

Each Occurrence Limit - \$1,000,000

Fire Damage Limit (Damage to rented premises) - \$100,000

Personal & Advertising Injury Limit - \$1,000,000

General Aggregate Limit - \$2,000,000

Products & Completed Operations Aggregate Limit - \$2,000,000

**Business Automobile Liability Insurance** covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Contract, with a combined single limit of liability for bodily injury and property damage of not less than:

Combined Single Limit (Each Accident) - \$1,000,000

Any Auto (Symbol 1)

Hired Autos (Symbol 8)

Non-Owned Autos (Symbol 9)

**Professional Liability Insurance** with a limit of liability no less than \$1,000,000 per claim with a deductible per claim, if any, not to exceed 5% of the limit of liability providing for all sums which the Professional shall become legally obligated to pay as damages for claims arising out of the services performed by the Professional or any person employed, consultant and/or sub consultant in connection with this Agreement. This insurance shall be maintained for three (3) years after any work covered by this Agreement.

5.4 Minimum Coverage Form (Shall Be At Least As Broad As):

**Workers Compensation**

The standard form approved by the State of Jurisdiction

**Commercial General Liability**

ISO (Insurance Services Office, Inc.) Commercial General Liability coverage ("occurrence" Form CG 0001) or its equivalent. "Claims made" form is unacceptable except for professional or environmental liability coverage.

**Commercial Auto Liability**

ISO (Insurance Services Office, Inc.) Commercial Auto Liability coverage (form CA 0001) or its equivalent.

5.5 Required Endorsements.

**In addition to being stated on the Certificate of Insurance, the following endorsements with City approved language**

Additional insured status provided on a primary & non-contributory basis (except for Workers Compensation Insurance and Professional Liability Insurance)

Waiver of Subrogation for all required insurance coverages.

Notices of Cancellation/Non-renewal/Material Changes on any required insurance coverage must be sent directly to the City of Coral Gables by the Insurance Company. The City only requires the same statutory notice that an insurance company must provide to the insured, however this Notice may not be less than Thirty (30) Days, except a Ten (10) Day Notice of cancellation is acceptable for non-payment of premium.

Notices of Cancellation, Non-renewal or Material Change must be provided to the following address:

CITY OF CORAL GABLES  
INSURANCE COMPLIANCE  
P.O. BOX 12010-CE  
HEMET, CA 92546-8010

**All policies shall contain a “severability of interest” or “cross liability” clause without obligation for premium payment of the City.**

**5.6 How To Evidence Coverage To The City.**

**The following documents must be provided to the City;**

A Certificate of Insurance containing the following information:

Issued to entity contracting with the City

Evidencing the appropriate Coverage

Evidencing the required Limits of Liability required

Evidencing that coverage is currently in force

Language provided in the Special Provision Section of the Certificate of Insurance affirming that all endorsements required by the City have been endorsed to all of the policies.

A copy of each endorsement that is required by the City

**All Certificates of Insurance must be signed by a person authorized by that insurer to bind or amend coverage on its behalf**

**The City reserves the right to require a complete copy of any insurance policies required by the City. Should the City invoke this right, the policy must be provided directly to the City by the insurance agent or insurance company.**

**The city reserves the right to require additional insurance requirements at any time during the course of the agreement.**

5.7 Waiver of Insurance Requirements. Should a bidder not be able to comply with any insurance requirement, for any reason, the bidder must write a letter to the Risk Management Division on their letter head requesting that a waiver of a specific insurance requirement be granted. The requested waiver will be evaluated by the Risk Management Division. The Risk Management Division will approve or reject the requested waiver of insurance and will forward the waiver to the City Attorney's Office for further evaluation.

PROFESSIONAL is encouraged to review their individual insurance needs with their insurance agents/brokers regularly to determine the adequacy of the coverage and the limits of liability that are being purchased. In certain circumstances, the City of Coral Gables will require additional insurance to respond to the hold harmless and indemnification clauses executed with the City of Coral Gables. Based on the nature of the work performed, the City of Coral Gables will determine what additional types of insurance and/or higher limits of liability that must be obtained.

All insurance documents evidencing insurance to City of Coral Gables – Insurance Compliance should be sent via email to [cityofcoralgables@ebix.com](mailto:cityofcoralgables@ebix.com) and copy to [druiz@coralgables.com](mailto:druiz@coralgables.com). Should you require assistance, contact the dedicated Call Service Lines for City of Coral Gables:

Call Service Lines - Insurance Compliance  
Phone: (951) 652-2883.  
Fax: (770) 325-0417  
Email: [cityofcoralgables@ebix.com](mailto:cityofcoralgables@ebix.com)

When submitting Professional, Contractor and/or Vendor evidence of insurance to the City of Coral Gables, the Certificate Holder section of the Certificate of Insurance should read as follows:

City of Coral Gables  
Insurance Compliance  
PO Box 12010 –CE  
Hemet, CA 92546-8010

## **VI. SOVEREIGN IMMUNITY**

6.1 The Professional acknowledges that the Florida Doctrine of Sovereign Immunity bars all claims by Professional against the City other than claims arising out of this Agreement. Specifically, the Professional acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Agreement. The Professional acknowledges that this Agreement in no way estops or affects the CITY's exercise of its regulatory authority. In addition, the CITY retains the full extent of its sovereign immunity in relation to the exercise of its regulatory authority. The PROFESSIONAL acknowledges that it has no right and will not make claim based upon any of the following:



- a. Claims based upon any alleged breach by the CITY of implied warranties or representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the CITY. All obligations of the CITY are only as set forth in this Agreement;
- b. Claims based upon negligence or any tort arising out of this Agreement;
- c. Claims upon alleged acts or inaction by the City, its commissioners, attorneys, administrators, consultants, agents, or any CITY employee;
- d. Claims based upon an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by an authorized representative for the CITY and PROFESSIONAL.

## **VII. STANDARD OF CARE**

7.1 The Professional shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily provided by a comparable professional under similar circumstances and the Professional shall, at no additional cost to the City, re-perform services which fail to satisfy the foregoing standard of care.

7.2 The Professional services shall be performed by skilled and competent personnel duly registered to perform them.

## **VIII. NON-DISCRIMINATION**

8.1 EEO and ADA: The Professional must be and remain in compliance with all local, state and federal Equal Employment Opportunity (EEO) and American Disabilities Act (ADA) requirements.

8.2 It is understood that the Professional shall not discriminate against any employee in the performance of the contract with respect to hire, tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment because of age, marital status, race, color, religion, national origin, sex, or disability.

8.3 City Policy Regarding Conduct. All contractors, their employees, agents and subcontractors must abide by the City's policies regarding conduct. Discrimination, harassment, and/or violations of City policies will not be tolerated and are grounds for termination of the Agreement without harm to the City or its employees.

## **IX. CONFLICT OF INTEREST**

9.1 The Professional represents that it has provided a list of all current clients subject to the jurisdiction of the City. Any potential or actual conflict between private interests and responsibilities under this Agreement shall be immediately disclosed to the City.

## **X. CONFIDENTIALITY**

10.1 Subject to the requirements of Chapter 119 of the Florida Statutes, no reports, information, computer programs, documentation, and/or data given to or prepared or assembled by the Professional under this Agreement shall be made available to any individual or organization by the Professional without prior written approval of the City.

## **XI. OWNERSHIP OF DOCUMENTS**

11.1 Any and all documents, records, disks, or other information shall become the property of the City for its use and/or distribution as may be deemed appropriate by the City.

## **XII. TRUTH-IN-NEGOTIATION CERTIFICATE**

12.1 Execution of this Agreement by the Professional shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

12.2 The said rates and costs shall be adjusted to exclude any significant sums should the City determine that the rates and costs were increased due to inaccurate, incomplete, or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The City shall exercise its rights under this "Certificate" within one (1) year following payment.

## **XIII. NOTICE**

13.1 Any notice, request, instruction or other document required or permitted to be given hereunder by either party hereto to the other shall be in writing, and delivered personally, or sent by certified or registered mail, postage prepaid, return receipt requested, to the address set forth for such party at the bottom of this Agreement. Any notice so given shall be deemed received when personally delivered or three (3) business days after mailing. Any party may change the address to which notices are to be sent by giving notice of such change of address to the other party in the manner herein provided for giving notice. Notice as to the City of Coral Gables shall be to:

City Manager  
City of Coral Gables  
405 Biltmore Way  
Coral Gables, FL 33134

cc: City Attorney

Notice as to the Professional shall be to: M.C Harry & Associates, Inc.  
2780 S.W Douglas Road Suite #302  
Miami, FL, 33133

#### **XIV.DEFAULT AND TERMINATION**

14.1 The City may terminate this Agreement for convenience at any time by providing thirty (30) days written notice to the Professional. If the professional is found by the City to fail in the performance of their duties as stipulated in this agreement, The City will provide a written notice to the professional stating the deficiencies the professional will have thirty (30) days to cure the deficiency after which the City will proceed to termination if said deficiencies have not be corrected. In the event of a termination for cause, due to the Professional's failure to perform in accordance with the terms of this Agreement or the Professional's repudiation of this Agreement by word or conduct. The City may immediately terminate the Agreement if after the 30 day cure period the professional has not corrected the deficiency and the Professional shall be paid any sums otherwise due and owing under this Agreement only after City has completed the work called for by this Agreement with other forces, and has deducted the cost of such work, and any other damages payable to City, from any contract balance otherwise due and owing to the Professional under this Agreement. In the event of a termination for convenience, the Professional shall be paid for all services performed through the date of termination, based on the percentage of services completed (subject to applicable setoff rights) and the Professional shall not be entitled to any other compensation or damages from the City. If, after notice of termination for cause, it is determined for any reason that Professional was not in default, the rights and obligations of the City and the Professional shall be the same as though the termination had been a termination for convenience. In no event shall the City be liable to Professional for lost profits on any work not performed, overhead, or any other type of consequential, special or indirect damages, and Professional hereby waives the same. Professional may terminate this Agreement due to the City's failure to comply with the material terms of this Agreement after giving City thirty (30) days written notice of its purported default and a reasonable opportunity to cure. Upon termination of this Agreement, all schematics, designs, plans, specifications, documents, records, disks, or other information (including electronic copies) produced or developed by Professional or subconsultants, whether finished or not, shall become City property. Failure to timely deliver the documentation shall be cause to withhold any payments due, without recourse by the Professional, until all documentation is delivered to the City.

#### **XV.UNCONTROLLABLE FORCES**

15.1 Neither the City nor Professional shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It

includes, but is not limited to, fire, flood, earthquake, storm, lighting, epidemic, war, riot, civil disturbance, sabotage, and governmental action.

15.2 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

## **XVI. MODIFICATION**

16.1 This Agreement may not be amended or modified unless in writing and signed by both parties.

## **XVII. ASSIGNMENT AND SUBCONTRACTING**

17.1 This Agreement and the rights of the Professional and obligations hereunder may not be assigned, delegated or subcontracted by the Professional without the express prior written consent of the City. Any assignment, delegation or subcontract without such express prior written consent shall be null and void and shall constitute a material breach of this Agreement, upon which the City may immediately terminate the Agreement in accordance with the provisions of paragraph 13.1 (Termination by Default). The City may assign its rights, together with its obligations hereunder.

## **XVIII. AUDITS**

18.1 The Professional shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. Professional shall maintain adequate records to justify all charges and costs incurred in performing the services for at least three (3) years after completion of this Agreement. Professional shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. Professional agrees that City, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to this Agreement. All financial records, timecards and other employment records, and proprietary data and information shall be kept and maintained by Professional and made available to the City during the terms of this Agreement and for a period of three (3) years thereafter unless City's written permission is given to dispose of any such material prior to such time. All such materials shall be maintained by Professional at a location in Miami-Dade County, Florida, provided that if any such material is located outside Miami-Dade County, then, at City's option Professional shall pay City for travel, per diem, and other costs incurred by City to examine, audit, excerpt, copy or transcribe such material at such other location. The City shall have access to such

books, records, and documents as required in this section for the purpose of inspection or audit during normal working business hours at the Professional's place of business.

In the event that an audit is conducted by Professional specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by Professional, then Professional shall file a copy of the audit report with the City's Auditor within thirty (30) days of Professional's receipt thereof, unless otherwise provided by applicable Federal or State law. City shall make a reasonable effort to maintain the confidentiality of such audit report(s).

Failure on the part of Professional to comply with the provisions of this Paragraph 18.1 shall constitute a material breach upon which the City may terminate or suspend this Agreement.

18.2 City Audit Settlements. If, at any time during or after the term of this Agreement, representatives of the City conduct an audit of Professional regarding the work performed under this Agreement, and if such audit finds that City's dollar liability for any such work is less than payments made by City to Professional, then the difference shall be either repaid by Professional to City by cash payment upon demand or, at the sole option of City, deducted from any amounts due to Professional from City. If such audit finds that City's dollar liability for such work is more than the payments made by City to Professional, then the difference shall be paid to Professional by cash payment.

## **XIX. AVAILABILITY OF FUNDS**

19.1 The obligations of the City under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the City Commission.

## **XX. COMPLIANCE WITH LAWS**

20.1 In performance of the services, the Professional will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards. It shall be the responsibility of the Professional to obtain and maintain, at no cost to the City, any and all license and permits required to complete the services provided pursuant to this Agreement.

20.2 Conflict of Interest. Professional covenants that no person employed by the Professional which exercises any functions or responsibilities in connection with this Agreement has any personal financial interests direct or indirect with the City. Professional further covenants that, in the performance of this Agreement, no person having a conflicting interest shall be employed. Any such interests on the part of Professional or its employees must be disclosed in writing to City.

20.3 Professional is aware of the conflict of interest code of the City of Coral Gables, the Conflict of Interest and Code of Ethics of Miami-Dade County, Florida,

Section 2-11.1 et seq., and the Ethics Laws of the State of Florida, and agrees that it shall fully comply in all respects with the terms of said laws.

## **XXI. FEDERAL AND STATE TAXES**

21.1 The City is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the City will provide an exemption certificate to the Professional. The Professional shall not be exempted from paying sales tax to its suppliers for materials to fulfill the contractual obligations with the City, nor shall the Professional be authorized to use the City's Tax Exemption Number in securing such materials.

## **XXII. SUCCESSORS AND ASSIGNS**

22.1 The City and the Professional each binds itself and its partners, successors, assigns, and legal representatives to the other party to this Agreement and to its partners, successors, executors, administrators, assigns, and legal representatives. The Professional shall not assign this Agreement without the express written approval of the City via executed amendment.

## **XXIII. CONTINGENT FEES**

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

## **XXIV. ENTIRETY OF AGREEMENT**

24.1 The City and the Professional agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between the City and the Professional pertaining to the services, whether written or oral. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

The following documents are made an integral part of this Agreement:

- A. Insurance Certificates;

## **XXV. COUNTERPARTS**

25.1 This Agreement may be executed simultaneously in several counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

#### **XXVI. WAIVER**

26.1 A waiver by either the City or the Professional of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

#### **XXVII. SEVERABILITY, SURVIVAL**

27.1 If any provision of this Agreement is found to be void and unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall nevertheless be binding upon the parties with the same effect as though the void or unenforceable provision had been severed and deleted.

#### **XXVIII. GOVERNING LAW AND VENUE**

28.1 The laws of the State of Florida shall govern this Agreement. Any and all legal action necessary to enforce the Agreement will be held in Miami-Dade County, and the Agreement will be interpreted according to the laws of Florida.

28.2 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way effect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement, and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

28.3 The provisions of this section shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.

### **XXX. TIME IS OF THE ESSENCE**

30.1 Time is of the Essence. If any anticipated or actual delays arise, Professional shall immediately so notify the City. Regardless of notice if services or deliveries are not made at the time agreed upon, the City may, at its sole discretion, terminate this Agreement and proceed pursuant to Paragraph 13.1(Termination by Default).

### **XXXI. HEADINGS**

30.1 The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of the Agreement.

### **XXXII. PUBLIC RECORDS**

31.1 Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Professional acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. Professional also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, Professional agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.

### **XXXII. WAIVER OF TRIAL BY JURY**

**THE PARTIES TO THIS AGREEMENT HEREBY AGREE TO EXHAUST ALL ADMINISTRATIVE REMEDIES BEFORE FILING A LAWSUIT IN CIVIL COURT TO RESOLVE THE DISPUTE. CITY AND PROFESSIONAL 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 THE CONTRACT DOCUMENTS, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THE CONSTRUCTION OF THE WORK, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY.**



IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Approved as to Insurance:

AS TO CITY:

\_\_\_\_\_  
David J. Ruiz  
Risk Management Division

\_\_\_\_\_  
Catherine Swanson-Rivenbark  
City Manager

Approved by Department Head  
or head of negotiations team as to  
the negotiated business terms

ATTEST:

\_\_\_\_\_  
Glenn Kephart  
Director, Public Works

\_\_\_\_\_  
Walter J. Foeman  
City Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

Approved as to compliance with  
Applicable Procurement Requirements:

\_\_\_\_\_  
Craig E. Leen  
City Attorney

\_\_\_\_\_  
Michael P. Pounds,  
Chief Procurement Officer

Approved as to Funds Appropriation:

\_\_\_\_\_  
Diana M. Gomez, Finance Director

ATTEST:

AS TO PROFESSIONAL

\_\_\_\_\_  
Corporate Secretary

\_\_\_\_\_  
President  
M.C Harry & Associates, Inc.

Print Name: James Piersol

Print Name: Craig Aquart

(SEAL)

(OR)  
WITNESSES (2):

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

**RFQ 2015.09.17 Architectural Consultant**

**EXHIBIT 'C'**

**PRICING SCHEDULE**

Upon agreement of a fee, the Director of Public Works or his/her designee, will issue a written authorization to proceed to the Consultant, In the case of an emergency, the CITY reserves the right to issue oral authorization to the CONSULTANT with the understanding that written confirmation will follow immediately thereafter. The CITY reserves the right to contract with the consultant for additional services. Any increase in the agreed upon amount shall be approved by the Public Works director or designee, and shall be in accordance with applicable CITY and State regulations.

The fees for professional services for each of the WORK shall be determined by one of the following methods or a combination thereof, as mutually agreed upon by the CITY and the Consultant.

Multiple of Direct Salary expense: The "Note to Exceed" fee may be based on multiple of 2.7 times the salary rate, as determined from salaries reported to the Director of Internal Revenue, of the personnel engaged directly on a project, such multiplied rate not to exceed \$150.00 dollars per hour by either principles or employees.

Fixed Sum (Lump Sum): The fee for a task or Scope of Work may be fixed sum as mutually agreed upon by the CITY and the CONSULTANT.

Hourly Rate Fee: The CITY agrees to pay , and the consultant agrees to accept, for the services rendered pursuant to this agreement. Fees in accordance with the following:

<u>Category</u>	<u>Hourly Rates</u>
• Principal	\$150.00
• R.A	\$125.00
• P.E	\$125.00
• Landscaping Architect	\$108.00
• Project Manager	\$125.00
• CADD Technician	\$65.00
• Clerical	\$50.00
• Construction Inspector	\$90.00
• Multiplier	2.7

  
\_\_\_\_\_  
Representative Authorized Signature / Title  
James Piersol, Principal  
MCHarry and Associates, Inc.

4/21/2016  
\_\_\_\_\_  
Date