

# **Professional Services Agreement for Right-of-Way Consultant Services**

**2021-06**



## **The Town of Miami Lakes Council:**

**Mayor Manny Cid  
Vice Mayor Nelson Rodriguez  
Councilmember Jeffrey Rodriguez  
Councilmember Marilyn Ruano  
Councilmember Josh Dieguez  
Councilmember Luis Collazo  
Councilmember Carlos Alvarez**

Edward Pidermann, Town Manager  
The Town of Miami Lakes  
6601 Main Street  
Miami Lakes, FL 33014

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DRAFT

This Agreement made this \_\_\_\_ day of \_\_\_\_\_ in the year **2020** ("Agreement") by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and HDR Engineering, Inc. hereinafter called the "Consultant," having a principal office at \_\_\_\_\_.

### **RECITALS**

**WHEREAS** the Town has requested the Consultant to provide a right-of-way consultant services ("Services").

**WHEREAS**, the Consultant has the necessary expertise to provide the requested Services and has agreed to provide said Services.

**WITNESSETH**, that the Town and the Consultant, for the considerations herein set forth, agree as follows:

### **SECTION A: GENERAL TERMS AND CONDITIONS**

#### **1. Definitions**

- a. Additional Services** means any Work defined as such in this Agreement, secured in compliance with Florida Statutes and Town Code.
- b. Attachments** means the Attachments to this Agreement which are expressly incorporated by reference and made a part of this Agreement as if set forth in full.
- c. Consultant** means HDR Engineering, Inc., which has entered into the Agreement to provide professional services to the Town.
- d. Deliverables** mean all documentation and any items of any nature submitted by the Consultant to the Town's Project Manager for review and acceptance pursuant to the terms of this Agreement.
- e. Errors** means Services or work product prepared by the Consultant that are not correct or are incomplete, which results in the need for revision or re-issuance of the Services performed or developed based on the Services provided for under this Agreement.
- f. Hourly Rates** means the expense to the Consultant and on an hourly rate basis for employees in the specified professions and job categories assigned to provide Services under this Agreement. Hourly rates are inclusive of all indirect expense, cost, overhead, and margin.
- g. Fee** means the amount of compensation mutually agreed upon for the completion of Basic Services as determined in accordance with Article A.2.c.i. Fee Amount.
- h. Project Manager** means the Title of Project Supervisor who will manage and monitor the Services to be performed under this Agreement.
- i. Professional Services** means those services within the scope of practice for right-of-way consultant services.
- j. Scope of Service(s)** means the activities, tasks, objectives, deliverables, and completion of work provided for under this Agreement.
- k. Town Council** means the legislative body of the Town of Miami Lakes.

- l. **Town Manager*** means the duly appointed chief administrative officer of the Town of Miami Lakes or designee.
- m. **Town or Owner*** means the Town of Miami Lakes, Florida, a Florida municipal corporation, the public agency which is a party hereto and for which this Agreement is to be performed. In all respects hereunder, Town's performance is pursuant to Town's position as the owner of a Project. In the event the Town exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, codes, laws and ordinances will be deemed to have occurred pursuant to Town's authority as a governmental body and will not be attributable in any manner to Town, as the owner, as a party to this Agreement. For purposes of this Agreement, "Town" without modification means the Town Manager.
- n. **Work Order*** means a document approved and issued by the Town authorizing the performance of Additional Services to be provided by the Consultant.
- o. **Work Order Proposal*** means a document prepared by the Consultant, at the request of the Town for Services to be provided by the Consultant.

## **2. General Conditions**

### ***a. Term***

The Term of this Agreement shall be for three (3) year(s) commencing on the effective date of the Agreement.

The Town, by action of the Town Manager, has the option to extend the term of the Agreement for two (2) one-year(s) terms, subject to continued satisfactory performance as determined by the Town Manager and to the availability and appropriation of funds.

### ***b. Scope of Services***

Consultant agrees to provide the Services as specifically described and set forth in Section B.

### ***c. Compensation***

#### ***i. Fee Amount***

The amount of compensation payable by the Town to Consultant for the Services included in Attachment A, in accordance with the Fee Schedule established in Attachment B; provided, however, that in no event shall the amount of compensation exceed \$\_\_\_\_\_ per year for the initial three (3) year period unless **the insurance provided is modified under Section 3 of the Agreement, at which time the fee to be paid to Consultant shall be adjusted accordingly. Any adjustment to the fee shall be subject to approval by action of the Town manager, who has authority to authorize fee adjustments up to \$10,000 or Town Council for any fee adjustments exceeding \$10,000** and put into effect by written amendment to this Agreement.

Annual broker fee shall remain firm and fixed for the initial term of the Agreement. The fee for any option or extension periods may be negotiated but shall be capped at 2% of the previous year's annual fee. The Consultant shall provide written notice and justification to the Project Manager within ninety (90) days of the Agreement expiration date for any proposed increase in the annual broker fee.

The Consultant shall not accept any remuneration other than the amount(s) stipulated in Attachment B in connection with providing the Services. The Consultant will disclose to the Town any and all commissions received by the Consultant for the Services provided to Town pursuant to this Agreement. Such commissions shall not include, and the Consultant shall not accept in connection with the Services any additional remuneration.

The program and prices for insurance premium(s) shall be reviewed and approved by the Town each year of the Agreement, including option years.

All Services undertaken by the Consultant before the Town's approval of this Agreement shall be at the Consultant's own risk and expense.

ii. Payments

Consultant shall invoice the Town in accordance with the Fee Scheduled contained in Attachment B of this Agreement.

The Consultant shall attach to the invoice all supporting data for payments acceptable to the Town that documents the costs incurred on an hourly rate.

All payments shall be made in accordance with the Florida Statute 218.74, which is also known as the Local Government Prompt Payment Act.

**3. Additional Services**

When the Town desires to obtain insurance pursuant to this Agreement, the Town will notify the Consultant in writing of the specifics of the insurance required, including, but not limited to, the nature of the coverage, the amount of the coverage, and a specification of named insureds, additional insureds, or additional named insureds. The Consultant shall then proceed to obtain quotes for the requested insurance. At such time as the Consultant has completed the process, the Vendor shall submit to the Town a report detailing the work performed by the Consultant, the insurance options available to the Town, the Consultants recommendations with explanation for the recommendation, and all costs, including premiums and commissions, associated with each option. The Town shall review the options and shall either select one of the options available or reject all options. If the Town selects an option, the Town will issue a Purchase Order to the company or companies providing the insurance under that option.

**4. Performance**

**a. *Performance and Delegation***

The Services to be performed hereunder must be performed by the Consultant or Consultant's own staff, unless otherwise provided in this Agreement, or approved, in writing by the Town Manager. Said approval will not be construed as constituting an agreement between the Town and said other person or firm and the Town assumes no liability or responsibility for any subconsultant.

**b. Removal of Unsatisfactory Personnel**

The Project Manager or Town Manager may make written request to Consultant for the prompt removal and replacement of any personnel employed or retained by the Consultant to provide and perform Services pursuant to the requirements of this Agreement. The Consultant must respond to the Town within seven (7) calendar days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that may not occur. All decisions involving personnel will be made by the Town. Such request will solely relate to said employees working under this Agreement and not as employees of the Consultant or subconsultant.

**c. Consultant Key Staff**

The parties acknowledge that Consultant was selected by the Town, in part, on the basis of qualifications of particular staff identified in Consultant's response to Town's solicitation, hereinafter referred to as "Key Staff". Consultant must ensure that Key Staff are available for Services hereunder as long as said Key Staff are in Consultant's employ. Consultant must obtain prior written acceptance of Project Manager to change Key Staff. Such approval shall not be unreasonably withheld. Consultant must provide the Project Manager with such information, as may be necessary, to determine the suitability of proposed new Key Staff personnel. The Project Manager will act reasonably in evaluating Key Staff qualifications. Such acceptance will not constitute any responsibility or liability for the individual's ability to perform.

**d. Time for Performance**

The Consultant agrees to start all Services hereunder upon execution of the Agreement and complete each, task within the time stipulated in the Agreement. Time is of the essence with respect to performance of this Agreement, however, it is understood that the Consultant's services must be performed using sound professional practices.

A reasonable extension of the time for completion of various tasks may be granted by the Town Manager should there be a delay on the part of the Town in fulfilling its obligations under this Agreement as stated herein. Such extension of time shall not be cause for any claim by the Consultant for extra compensation.

**5. Standard of Care**

Consultant is solely responsible for the technical accuracy and quality of its Services. Consultant must perform due diligence, in accordance with customary industry practices, performing the Services under this Agreement that are provided at the same time and in the same locale. Consultant will be responsible for the professional quality, technical accuracy and coordination of all reports, and other documents furnished by the Consultant under this Agreement. Consultant must, without additional compensation, correct or revise any errors, omissions, or deficiencies in its reports, documents, or other Services.

**6. Subconsultants**

☐ Unless this box is checked, the use of subconsultants is prohibited under this Agreement.

**7. Default**

**a. General**

If Consultant fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Consultant will be in default. Upon the occurrence of a default

hereunder the Town, in addition to all remedies available to it by law, may, upon written notice to Consultant **and the failure of the Consultant to cure such default in a reasonable time as set forth in the notice**, terminate this Agreement whereupon all payments, advances, or other compensation paid by the Town to Consultant while Consultant was in default must be immediately returned to the Town. Consultant understands and agrees that termination of this Agreement under this section does not release Consultant from any obligation accruing prior to the effective date of termination. The Town, **as set forth above shall** allow the Consultant a specified time to correct a default.

**b. Conditions of Default**

A finding of default and subsequent termination for cause may include, without limitation, any of the following:

- i. Consultant fails to obtain or maintain the required insurance.
- ii. Consultant fails to comply, in a substantial or material sense, with any of its duties under this Agreement, with any terms or conditions set forth in this Agreement or in any agreement it has with the Town, beyond the specified period allowed to cure such default.
- iii. Consultant fails to commence the Services within the time provided or contemplated herein or fails to complete the Services in a timely manner as required by this Agreement.

**c. Time to Cure Default; Force Majeure**

Town through the Town Manager will provide written notice to Consultant as to a finding of default, and Consultant must take all necessary action to cure said default within time stipulated in said notice, after which time the Town may terminate the Agreement. The Town, at its sole discretion, may allow additional days to perform any required cure if Consultant provides written justification deemed reasonably sufficient.

Should any such failure on the part of Consultant be due to a condition of Force Majeure as the term is interpreted under Florida Law, then the Town may allow an extension of time reasonably commensurate with the cause of such failure to perform or cure.

**8. Termination of Agreement**

**a. Town's Right to Terminate**

The Town Manager has the right to terminate this Agreement for any reason or no reason, upon thirty (30) days' written notice. Upon termination of this Agreement, documents, analysis, materials, and/or reports, including all electronic copies related to Services authorized under this Agreement, whether finished or not, must be turned over to the Town. The Consultant will be paid for the Services performed and accepted, provided that said documentation is turned over to the Project Manager or Town Manager within ten (10) business days of termination.

**b. Consultant's Right to Terminate**

The Consultant shall have the right to terminate this Agreement, in writing, following breach by the Town, if the breach of the Agreement has not been corrected within thirty (30) days from the date of the Town's receipt of a written statement from Consultant specifying its breach of its duties under this Agreement.



**c. *Termination Due to Undisclosed Lobbyist or Agent***

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

For the breach or violation of this provision, the Town has the right to terminate this Agreement without liability and, at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

**9. Documents and Records**

**a. *Ownership of Documents***

All documents, analysis, materials, computer files, and reports prepared or obtained under this Agreement, as well as all data collected, including all electronic digital copies, will be considered works made for hire and are the property of the Town, without any restriction or limitation on their use. Upon expiration or termination of the Agreement the Consultant must turn over all records, documents and data, whether used or not used, including electronic data as required under Florida Statute 119.0701(d). Consultant is to keep copies of all such records, documents, or data for its records. However, Article A6.03 will continue in full force and effect after the expiration or termination of this Agreement. Any reuse or modification of such Documents for purposes other than those intended by the Consultant in its scope of services shall be at the Town's sole risk and without liability to the Consultant.

**b. *Delivery upon Request or Cancellation***

Failure of the Consultant to promptly deliver all such documents in the possession of the Consultant, both hard copy and digital, to the Town Manager within ten (10) days of cancellation, or within ten (10) days of request by the Town Manager, will be just cause for the Town Manager to withhold payment of any fees due Consultant until Consultant delivers all such documents. Consultant will have no recourse from these requirements.

**c. *Nondisclosure***

To the extent allowed by law, Consultant agrees not to divulge, furnish, or make available to any third person, firm, or organization any information or documentation related to this Agreement, without Town Manager's prior written consent, or unless incident to the proper performance of the Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant hereunder, and Consultant must require all of its employees, agents and Subconsultants comply with the provisions of this paragraph. Consultant will be entitled to limited use of the information and documents related to this Agreement, which will be used for the sole purpose of marketing to generate new business clients.

**d. *Maintenance of Records***

Consultant will keep adequate records and supporting documentation, which concern or reflect its Services hereunder. Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, must be kept in accordance with statute. Otherwise, the records and

documentation will be retained by Consultant for a minimum of three (3) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. Town, or any duly authorized agents or representatives of Town, has the right to audit, inspect, and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the three (3) year period noted above; provided, however such activity will be conducted only during normal business hours. The Consultant agrees to furnish copies of any records necessary, in the opinion of the Town Manager, to approve any requests for payment by the Consultant.

Consultant shall also comply with the following requirements of the Florida Public Records Law including:

- i. Consultant must keep and maintain all public records required by the Town in order to perform services under this Agreement.
- ii. Upon request from the Town's custodian of public records, Consultant shall provide the Town with a copy of the requested public records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- iii. Consultant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the contract if the Consultant does not transfer the records to the Town.
- iv. Upon completion of the contract, Consultant shall transfer, at no cost, to the Town all public records in the possession of the Consultant or keep and maintain public records required by the Town to perform the service under this contract. If the Consultant transfers all public records to the Town upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE TOWN'S CUSTODIAN OF PUBLIC RECORDS VIA PHONE (305) 364-6100 x 1138; EMAIL CLERK@MIAMILAKES-FL.GOV; OR MAIL AT TOWN OF MIAMI LAKES, 6601 MAIN STREET, MIAMI LAKES, FL 33014.**

#### **10. Insurance**

The Consultant must not start Services under this Agreement until the Consultant has obtained all insurance required hereunder and the Town Manager has approved such insurance. Should the Consultant not maintain the insurance coverage required in this Agreement, the Town may cancel this Agreement or, at its sole discretion, must purchase such coverage and charge the Consultant for such coverage purchased.

**a. Companies Providing Coverage**

All insurance policies must be issued by companies authorized to do business under the laws of the State of Florida and satisfactory to the Town Manager. All companies must have a Florida resident agent and be rated at least A(VII), as per A.M. Best Company's Key Rating Guide, latest edition.

**b. Verification of Insurance Coverage**

The Consultant must furnish certificates of insurance to the Town Manager for review and approval prior to the execution of this Agreement. The Certificates must clearly indicate that the Consultant has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims at the time of award to the Consultant. Consultant must maintain coverage with equal or better rating as identified herein for the term of this Agreement. Consultant must provide written notice to the Town Manager of any material change, cancellation or notice of non-renewal of the insurance within 30 days of the change. Consultant must furnish a copy of the insurance policy or policies **with sensitive information redacted** upon request of the Town Manager within ten (10) days of written request.

**c. Forms of Coverage**

i. Commercial General Liability and Automobile Liability

Consultant must maintain commercial general liability coverage with limits of **\$500,000** per occurrence, **\$500,000** aggregate for bodily injury and property damage. The coverage must include Premises and Operations, Contingent and Contractual Liability, and Products and Completed Operations, with additional endorsements, as applicable. Coverage must be written on a primary, non-contributory basis with the Village listed as an additional insured as reflected by endorsement CG 2010 11/85 or its equivalence. Notice of cancellation is read (30) days/(10) days for nonpayment.

ii. Business Automobile

The Consultant must provide business automobile liability coverage including coverage for all owned, hired and non-owned autos with a combined single limit of **\$100,000** naming the Village as an additional insured with respect to this coverage. Notice of cancellation should read (30) days/(10) days for nonpayment.

iii. Professional Liability Insurance

The Consultant must maintain Professional Liability Insurance including Errors and Omissions coverage in the amount of **\$500,000** per claim, **\$500,000 annual** aggregate providing for all sums which the Consultant will be legally obligated to pay as damages for claims arising out of the Services performed by the Consultant or any person employed by the Consultant in connection with this Agreement. This insurance must be maintained for at least one year after completion of the construction and acceptance of the construction and acceptance of any project covered by this Agreement.

iv. Workers' Compensation Insurance

The Consultant must maintain Worker's Compensation Insurance in compliance with Florida Statutes, Chapter 440, as amended, and Employee's Liability with a limit of **\$500,000** each occurrence. Should the Consultant be exempt from Florida's Worker's

Compensation insurance requirement the Consultant must provide documentation from the State of Florida evidencing such exemption.

v. Modifications to Coverage

The Town Manager reserves the right to require modifications, increases, or changes in the required insurance requirements, coverage, deductibles or other insurance obligations by providing a thirty (30) day written notice to the Consultant. Consultant must comply with such requests unless the insurance coverage is not then readily available in the national market and may request additional consideration from Town accompanied by justification.

**11. Miscellaneous**

**a. *Indemnification***

The Consultant will hold harmless, indemnify the Town, its officials and employees from any and all claims, losses and causes of actions **to the extent** arise out of the performance of this Agreement as a result of any act of negligence or negligent omission, recklessness, or intentionally wrongful conduct of the Consultant or the Subconsultants. The Consultant will pay all claims and losses of any nature whatsoever in connection therewith in the name of the Town when applicable, and will pay all costs, including without limitation reasonable attorney's and appellate attorney's fees, and judgments which may issue thereon. The Consultant's obligation under this paragraph will not be limited in any way by the agreed upon the Agreement value, or the Consultant's limit of, or lack of, sufficient insurance protection and applies to the full extent that it is caused by the negligent, act, or omission, recklessness or intentional wrongful conduct of the Consultants, its agents, servants, or representatives.

**b. *Entire Agreement***

This Agreement, as it may be amended from time to time, represents the entire and integrated Agreement between the Town and the Consultant and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of this Agreement will not be deemed to be a waiver of any other breach of any provision of this Agreement.

**c. *Nonexclusive Agreement***

Consultant Services under this Agreement are to be provided on a nonexclusive basis and the Town, at its sole discretion and right, may engage other firms to perform the same or similar Service, provided, however, that the Town will first notify the Consultant that the Town has engaged such similar Service and that the duties performed or Service provided, to the extent they may conflict between the Consultant and those other firms engaged, are delineated by the Project Manager so that the Consultant and those similarly engaged are clear as to their responsibilities and obligations.

**d. *Successors and Assigns***

The performance of this Agreement must not be transferred, pledged, sold, delegated, or assigned, in whole or in part, by the Consultant without the written consent of the Town Council or Town Manager, as applicable. It is understood that a sale of the majority of the stock or partnership shares of the Consultant, a merger or bulk sale, or an assignment for the benefit of

creditors will each be deemed transactions that would constitute an assignment or sale hereunder requiring prior Town approval.

The Consultant's services are unique in nature and any transference without the prior written approval of the Town will be cause for the Town to terminate this Agreement. The Consultant will have no recourse from such cancellation. The Town may require bonding, other security, certified financial statements and tax returns from any proposed Assignee and the execution of an Assignment/ Assumption Agreement in a form satisfactory to the Town as a condition precedent to considering approval of an assignment.

The Consultant's services are unique in nature and any transference without the prior written approval of the Town will be cause for the Town to terminate this Agreement. The Consultant will have no recourse from such cancellation. The Town may require bonding, other security, certified financial statements and tax returns from any proposed Assignee and the execution of an Assignment/ Assumption Agreement in a form satisfactory to the Town as a condition precedent to considering approval of an assignment.

**e. *Applicable Law and Venue***

This Agreement will be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any suit or action brought by any party concerning this Agreement, or arising out of this Agreement, must be brought in Miami-Dade County, Florida. Each party will bear its own attorney's fees except in actions arising out of Consultant's duties to indemnify the Town under Article A7 where Consultant must pay the Town's reasonable attorney's fees.

**f. *Notices***

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by registered United States mail, return receipt requested, addressed to the party for whom it is intended and at the place last specified; and the place for giving of notice will remain such until it has been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

For Town of Miami Lakes:  
Edward Pidermann  
Town Manager  
6601 Main Street  
Miami Lakes, Florida 33014  
[pidermanne@miamilakes-fl.gov](mailto:pidermanne@miamilakes-fl.gov)

For Consultant:  
Hugo Solano  
HDR Engineering, Inc.  
15450 New Barn Road, STE 304  
Miami Lakes, FL 33014  
[hugo.solano@hdrinc.com](mailto:hugo.solano@hdrinc.com)

With a copy to:  
Nathalie Garcia  
Procurement Manager  
At the same address as above  
[garcian@miamilakes-fl.gov](mailto:garcian@miamilakes-fl.gov)

**g. *Interpretation***

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction will be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement

includes the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein,” “hereof,” “hereunder,” and “hereinafter” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

***h. Joint Preparation***

Preparation of this Agreement has been a joint effort of the Town and Consultant and the resulting document will not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

***i. Priority of Provisions***

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in this Agreement will prevail over any document incorporated by reference and be given effect.

***j. Mediation – Waiver of Jury Trial***

In an effort to engage in a cooperative effort to resolve conflict which may arise during the course of the Agreement, the parties to this Agreement agree all disputes between them will be submitted to non-binding mediation prior to the initiation of litigation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any Mediation Proceedings in Miami-Dade County, State of Florida. The parties will split the costs of a certified mediator on a 50/50 basis. The Consultant agrees to include such similar contract provisions with all Subconsultants and/or independent Consultants and/or Consultants retained for the project(s), thereby providing for non-binding mediation as the primary mechanism for dispute resolution.

In an effort to expedite the conclusion of any litigation, the parties voluntarily waive their right to jury trial or to file permissive counterclaims in any action arising under this Agreement.

***k. Compliance with Laws***

Consultant must comply with all applicable laws, codes, ordinances, rules, regulations, and resolutions, and all applicable guidelines and standards in performing its duties, responsibilities, and obligations related to this Agreement. This includes the Consultant maintaining in good standing all required licenses, certificates, and permits as required to perform the Services.

***i. Non-Discrimination***

Town warrants and represents that it does not and will not engage in discriminatory practices and that there must be no discrimination in connection with Consultant’s performance under this Agreement on account of race, color, sex, religion, age, handicap, marital status, or national origin. Consultant further covenants that no otherwise qualified individual will, solely by reason of his/her race, color, sex, religion, age, handicap, marital status, or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.

ii. ADA Compliance

Consultant must affirmatively comply with all applicable provisions of the Americans with Disabilities Act ("ADA") in the course of providing any work, labor, or services funded by the Town, including Titles I & II of the ADA (regarding nondiscrimination on the basis of disability) and all applicable regulations, guidelines, and standards. Additionally, the Consultant must take affirmative steps to insure nondiscrimination in employment of disabled persons.

***l. No Partnership***

Consultant is an independent Consultant. This Agreement does not create a joint venture, partnership, or other business enterprise between the parties. The Consultant has no authority to bind the Town to any promise, debt, default, or undertaking of the Consultant.

***m. Discretion of Town Manager***

Any matter not expressly provided for herein dealing with the Town or decisions of the Town will be within the exercise of the reasonable professional discretion of the Town Manager.

***n. Resolution of Disputes***

Consultant understands and agrees that all disputes between it and the Town based upon an alleged violation of the terms of this Agreement by the Town will be submitted for resolution in the following manner.

The initial step will be for the Consultant to notify the Procurement Manager in writing of the dispute identified in Article A8.05, Notices. Consultant must, within five (5) calendar days of the initial notification, submit all supporting documentation to the Procurement Manager. Failure to submit such notification and documentation will constitute a waiver of protest by the Consultant. Upon receipt of said documentation the Procurement Manager will review the issues relative to the dispute and issue a written finding.

Should the Consultant and the Procurement Manager fail to resolve the dispute the Consultant may submit an appeal of the Procurement Manager's finding in writing within five (5) calendar days to the Town Manager. Failure to submit such an appeal of the written finding shall constitute acceptance of the finding by the Consultant. Upon receipt of said notification the Town Manager will review the issues relative to the dispute and issue a written finding.

Appeal to the Town Manager for his/her resolution, is required prior to Consultant being entitled to seek judicial relief in connection therewith. Should the amount of compensation require approval or disapproval by the Town Council, Consultant will not be entitled to seek judicial relief unless:

- i. it has first received the Town Manager's written decision, approved by the Town Council if applicable, or
- ii. a period of sixty (60) calendar days has expired after submitting to the Town Manager a detailed statement of the dispute, accompanied by all supporting documentation, or a period of ninety (90) calendar days has expired where the Town Manager's decision is subject to Town Council approval; or
- iii. Town has waived compliance with the procedure set forth in this section by written instrument(s) signed by the Town Manager.

***o. Contingency Clause***

Funding for this Agreement is contingent on the availability of funds and continued authorization for the services and the Agreement is subject to amendment or termination due to lack of funds, reduction of funds, or change in regulations, upon thirty (30) days' notice. The Consultant shall be entitled to discontinue Services, which may include uncompleted hearings, without any recourse by the Town if the funding is not available to pay for Services not yet begun. In any event, the Town acknowledges that it will pay for Services performed that have been properly authorized by the Project Manager.

***p. Third-Party Beneficiary***

Consultant and the Town agree that it is not intended that any provision of this Agreement establishes a third-party beneficiary giving or allowing any claim or right of action whatsoever by any third-party under this Agreement.

***q. No Estoppel***

Neither the Town's review, approval, or acceptance of, or payment for Services performed under this Agreement will be construed to operate as a waiver of any rights under this Agreement of any cause of action arising out of the performance of this Agreement, and the Consultant will be and remain liable to the Town in accordance with applicable laws for all damages to the Town caused by the Consultant's negligent performance of any of the Services under this Agreement. The rights and remedies provided for under this Agreement are in addition to any other rights and remedies provided by law.

**END OF SECTION**



## **SECTION B SCOPE OF SERVICES**

### **1. Scope of Services**

The Services may consist of, but are not limited to, acquisition services, business damage analysis, business damage claims negotiations, relocation assistance, relocation assistance review, property management administration, preparation of suit information and lawsuit packages. Services shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended, and Rule 14-66.007, and Chapter 14-75 of the Florida Administrative Code, and the Florida Department of Transportation (FDOT) Right of Way Procedure Manual, and other applicable laws and regulations.

#### **Additional services may include:**

- Research and prepare a Relocation Needs Assessment Survey.
- Present all appropriate relocation notices and information to owners and tenants.
- Provide advisory assistance to all eligible parties.
- Maintain up-to-date surveys of available replacement business sites.
- Disclose availability of comparable business locations.
- Calculate all appropriate eligibilities for relocation benefits subject to approval by the Town.
- Prepare claims packages and submit to the Town in electronic format for approval.
- Prepare and process invoices for requesting warrants for payment of claims.
- Provide field surveillance and documentation in electronic format of business relocation when required.
- Deliver warrants to all displaces.
- Issue and deliver notices to vacate property.
- Notify the Town of need for eviction notices.
- Review any relocation appeals and prepare responses for Town review and approval.
- Property management administration such as property inventory and inspection, demolition, environmental management administration and support.
- Attendance at public meetings, workshops, or hearings.
- Records maintenance, quality assurance and production control.

**END OF SECTION**

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

WITNESS/ATTEST

(HDR Engineering, Inc.)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name, Title

\_\_\_\_\_  
Print Name, Title of Authorized Officer or Official

ATTEST:

(Corporate Seal)

Firm's Secretary

(Affirm Firm's Seal, if available)

ATTEST:

**Town of Miami Lakes**, a municipal corporation of the  
State of Florida

\_\_\_\_\_  
*Gina Inguanzo, Town Clerk*

\_\_\_\_\_  
Edward Pidermann, Town Manager

APPROVED AS TO LEGAL FORM AND CORRECTNESS:

\_\_\_\_\_  
Town Attorney

## CERTIFICATE OF AUTHORITY

I HEREBY CERTIFY that at a meeting of the Board of Directors of \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, a resolution was duly passed and adopted authorizing (Name) \_\_\_\_\_ as (Title) \_\_\_\_\_ of the corporation to execute agreements on behalf of the corporation and providing that his/her execution thereof, attested by the secretary of the corporation, shall be the official act and deed of the corporation.  
I further certify that said resolution remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_.  
Secretary: \_\_\_\_\_  
Print: \_\_\_\_\_

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## NOTARIZATION

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification and who (did / did not) take an oath.

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SIGNATURE OF NOTARY PUBLIC  
STATE OF FLORIDA

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PRINTED, STAMPED OR TYPED  
NAME OF NOTARY PUBLIC