

**PROFESSIONAL SERVICES AGREEMENT
FOR SPECIAL MASTER SERVICES
2017-43**



The Town of Miami Lakes Council:

**Mayor Manny Cid
Vice Mayor Tony Lama
Councilmember Luis Collazo
Councilmember Timothy Daubert
Councilmember Ceasar Mestre
Councilmember Frank Mingo
Councilmember Nelson Rodriguez**

Alex Rey, Town Manager
The Town of Miami Lakes
6601 Main Street
Miami Lakes, Florida 33014

TABLE OF CONTENTS

SECTION/ARTICLE	TITLE	PAGE
SECTION A	GENERAL TERMS AND CONDITIONS	4
Article A1	Definitions	4
Article A2	General Conditions	5
A2.01	Term	5
A2.02	Scope of Services	5
A2.03	Compensation	5
Article A3	Performance	5
A3.01	Performance and Delegation	5
A3.02	Standard of Care	6
Article A4	Town Provided Materials and Resources	6
A4.01	Documentation and Information	6
A4.02	Resources	6
Article A5	Termination Of Agreement	6
A5.01	Town’s Right To Terminate	6
A5.02	Consultant’s Right to Terminate	6
A5.03	Termination Due to Undisclosed Lobbyist or Agent	6
Article A6	Documents And Records	7
A6.01	Ownership of Documents	7
A6.02	Delivery Upon Request Or Cancellation	7
A6.03	Nondisclosure	7
A6.04	Maintenance of Records	7
Article A7	Indemnification	7
Article A8	<u>Miscellaneous</u>	9
A8.01	Audit Rights	9
A8.02	Entire Agreement	9
A8.03	Nonexclusive Agreement	9
A8.04	Successors and Assigns	9
A8.05	Applicable Law and Venue of Litigation	9
A8.06	Notices	10
A8.07	Interpretation	10
A8.08	Joint Preparation	10
A8.09	Mediation - Waiver of Jury Trial	10
A8.10	Compliance with Laws	11
A8.11	No Partnership	8
A8.12	Discretion of Town Manager	8
A8.13	Resolution of Disputes	9
A8.14	Contingency Clause	9
A8.15	Third Party Beneficiary	9
A8.16	No Estoppel	9
SECTION B	SCOPE OF SERVICES	13
<u>Article B1</u>	<u>Basic Services</u>	<u>13</u>
<u>Article B2</u>	<u>Additional Services</u>	<u>13</u>

This Agreement made this 1st day of May in the year **2017** ("Agreement") by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and Nuria Saenz, Esq., hereinafter called the "Consultant".

RECITAL

WHEREAS the Town has requested the Consultant to provide Special Master 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

Article A1 Definitions

- A1.01 Additional Services** means any work in addition to the Basic Services stated in this Agreement, which will be issued in accordance with Section B, Scope of Services, of this Agreement.
- A1.02 Basic Services** means those services designated as such in this Agreement.
- A1.03 Consultant** means Nuria Saenz, Esq., which has entered into the Agreement to provide professional services to the Town.
- A1.04 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 under this Agreement.
- A1.05 Fee** means the amount of compensation mutually agreed upon for the completion of Basic Services as determined in accordance with Article 2.03-1.
- A1.06 Project Manager** means the Director of Planning and Code Enforcement who will manage and monitor the Services to be performed under this Agreement.
- A1.07 Professional Services** means those services within the scope of the practice of financial management services.
- A1.08 Scope of Service or Services** means the activities, tasks, objectives, deliverables, and completion of work.
- A1.09 Town Council** means the legislative body of the Town of Miami Lakes.
- A1.10 Town Manager** means the duly appointed chief administrative officer of the Town of Miami Lakes or designee.
- A1.11 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 a Florida municipal corporation. For the purposes of this Agreement, "Town" without modification means the Town Manager.

ARTICLE A2 General Conditions

A2.01 Term

The term of this Agreement will be for three (3) years commencing on the effective date of the Agreement. The Town, by action of the Town Manager, has the option to extend the term for two (2) additional period(s) of one (1) year each, subject to continued satisfactory performance as determined by the Town Manager, and to the availability and appropriation of funds.

A2.02 Scope of Services

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

A2.03 Compensation

A2.03-1 Consultant will be paid an amount not to exceed \$25,000 over the term of this Agreement, at a flat rate of \$300.00 per hearing for the Services to be provided under this Agreement. Consultant will receive no other compensation or benefits from the Town under this Agreement. The maximum not to exceed value includes all payments and any Additional Services payments made to the Consultant.

A2.03-2 Payments

The Town will make payment against a properly submitted invoice on a monthly basis for Service performed in the preceding month. Payment requests which include Additional Services must clearly identify the Work Order number issued for the Additional Services. For Additional Services performed where no Work Order was issued supporting documentation must be provided with the invoice demonstrating that the Additional Services were requested by the Town. Consultant must use the Town's standard invoice form and all payments will be issued by the Town in accordance with the State of Florida Local Government Prompt Payment Act.

Article A3 Performance

A3.01 Performance and Delegation

The Services to be performed hereunder must be performed by Nuria Saenz, Esq., unless otherwise approved in writing by the Town Manager prior to the performance of the Service. Such approval(s) 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 allowing the Consultant to utilize a Subconsultant or other staff from its firm.

Consultant must comply at its own cost with the Town's Administrative Order 07-01, requiring the Consultant to conduct a criminal background check for all employees of the Consultant's Consultant staff who will perform any Services under this Agreement.

A3.02 Standard of Care

Consultant must perform its services consistent with all applicable federal, state, county, and municipal laws, rules, and regulations. Where the Consultant identifies a conflict the Consultant must present such conflicts and propose solutions. Any solution will be decided solely by the Town Manager or Procurement Manager.

Consultant is solely responsible for the accuracy and quality of its Services. Consultant must perform due diligence in accordance with best industry practices, in preparing and completing the Services. Consultant must, without additional compensation, correct or revise any Errors, and/or deficiencies in its Services.

ARTICLE A4 Town Provided Materials and Resources

A4.01 Documentation and Information

The Town will make available in a prompt and timely manner to the Consultant all available and pertinent documents and records in the Town's possession.

ARTICLE A5 Termination Of Agreement

A5.01 Town's Right To Terminate

The Town, including 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 Project Manager. The Consultant will be paid its hourly fee earned for work authorized prior to the termination, provided that said documentation is turned over to Town Manager within ten (10) business days of termination. Failure to timely deliver the documentation will be cause to withhold any payments due without recourse by Consultant until all documentation is delivered to the Town Manager or designee.

A5.01-1 Consultant will have no recourse or remedy from a termination made by the Town except to retain the fees earned as compensation for the Services that were performed in complete compliance with this Agreement, as full and final settlement of any claim, action, demand, cost, charge, or entitlement it may have, or will have, against the Town, its officials, or employees.

A5.02 Consultant's Right to Terminate

The Consultant has the right to terminate this Agreement for any reason or no reason, upon sixty (60) days' written notice. Refer to Section A5.01 for required deliverables and timeframes as a condition for any remaining payment(s).

A5.03 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 discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

Article A6 Documents And Records

A6.01 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 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.

A6.02 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.

A6.03 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, Subconsultants, 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.

A6.04 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.

Article A7 Indemnification

The Consultant will hold harmless, indemnify the Town, its officials and employees from any and all claims, losses and causes of actions which may 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 negligence, act, omission, recklessness or intentional wrongful conduct of the Consultants, its agents, servants, or representatives.

Article A8 Miscellaneous

A8.01 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.

A8.02 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.

A8.03 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 and the Town each binds one another, their partners, successors, legal representatives, and authorized assigns to the other party of this Agreement and to the partners, successors, legal representatives, and assigns of such party in respect to all covenants of this Agreement.

A8.04 Applicable Law and Venue of Litigation

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.

A8.05 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:
Alex Rey
Town Manager
6601 Main Street
Miami Lakes, Florida 33014
reya@miamilakes-fl.gov

procurement@miamilakes-fl.gov
For Consultant:
Nuria Saenz, Esq.
8314 Commerce Way #265,
Miami Lakes, FL 33016
nuriasaenz4oll@hotmail.com

With a copy to:
Procurement Manager
6601 Main Street
Miami Lakes, Florida 33014

A8.06 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.

A8.07 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.

A8.08 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.

A8.09 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.

A8.9-1 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.

A8.9-2 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.

A8.10 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.

A8.11 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.

A8.12 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 appeal of the written finding will constitute acceptance of the finding 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 appeal their dispute in writing within five (5) calendar days to the Town Manager. Failure to submit such 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.

A8.13 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.

A8.14 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.

A8.15 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

B1. Basic Services

The following Services are illustrative of the Basic Services to be provided by the Consultant which are covered by the Consultant's fixed hourly fee. Other routine services may be required that are not specifically enumerated herein that may be required to meet the intent of this Agreement and are considered part of the Basic Services:

1. Services. Consultant agrees to provide Special Master Services ("Services") as follows:
 - a. Hear code compliance matters in accordance with the provisions of the Town Code and Chapter 162, Florida Statutes.
 - b. Services shall be provided on a monthly basis that includes, but are not limited to, review of any case materials, review of any required memorandum of law and preparation of any required orders.
 - c. Hearing will be coordinated between the Project Manager and the Consultant, with the hearings to be held the third Monday of every month unless otherwise changed by both parties.
 - d. Consultant shall notify the Project Manager in writing within ten (10) days of receipt of a scheduled Special Master Hearing ("Hearing") of the Consultant's inability to serve as the Special Master due to conflict of interest, schedule or other reason. If applicable, the Hearing shall be rescheduled to a mutually acceptable date.

All Services performed under this Agreement shall be performed by Nuria Saenz, Esq., unless otherwise approved in writing by the Town Manager.

B2. Additional Services

The Town may, at its sole discretion, request that the Consultant perform Additional Services under the Agreement. In most instances the Town will issue a written Work Order detailing the scope of the Additional Services.

Most Additional Services will be compensated based on the hourly rate stipulated in Article A2.03 of the Agreement. However, the Town may, at its sole discretion, request Additional Services for services to be performed on a routine basis that will result in an adjustment to the fixed hourly fee that would be mutually agreed to by both parties.

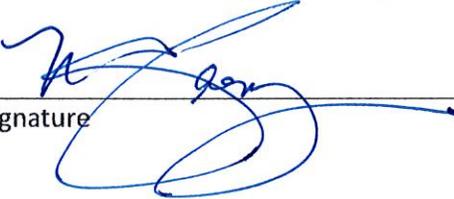
END OF SECTION

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

WITNESS/ATTEST

Consultant, Nuria Saenz, Esq.

Signature


Signature

Print Name, Title

Print Name, Title of Authorized Officer or Official

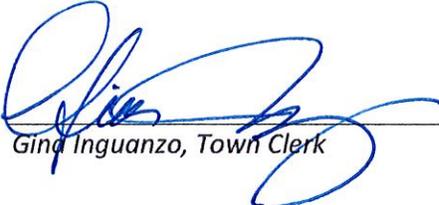
ATTEST:

(Corporate Seal)

Consultant Secretary
(Affirm Consultant Seal, if available)

ATTEST:

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


Gina Inguanzo, Town Clerk


Alex Rey, Town Manager

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: _____

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.

SIGNATURE OF NOTARY PUBLIC
STATE OF FLORIDA

PRINTED, STAMPED OR TYPED
NAME OF NOTARY PUBLIC