

**RESOLUTION NO. 07-517**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA APPROVING THE PROJECT AGREEMENT BETWEEN M.C. HARRY AND ASSOCIATES, INC. AND THE TOWN OF MIAMI LAKES FOR LEED CERTIFICATION AND AMENDING THE PROJECT AGREEMENT FOR THE ROYAL OAKS PARK COMMUNITY CENTER DESIGN CRITERIA SERVICES; AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AMENDMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AMENDMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Miami Lakes (the "Town") has retained the services of MC Harry and Associates, Inc. ("MC Harry") as Town Architect; and

**WHEREAS**, pursuant to Work Authorization No. 01A-07 Amendment to Project Agreement, MC Harry has prepared a Project Agreement to include Leadership in Energy and Environmental Design ("LEED") Certification services in connection with its development of architectural, structural, mechanical, electrical and plumbing design drawings for the Royal Oaks Park Community Center approved and agreed to in that certain Project Agreement adopted by Resolution 07-515 (the "Amendment"); and

**WHEREAS**, MC Harry has agreed to provide said LEED Certification services under the Amendment; and

**WHEREAS**, the Town Council finds that approval of the Amendment between MC Harry and the Town is in the best interests of the Town.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are true and correct and incorporated into this resolution by this reference.

**Section 2. Approval of Amendment.** The Project Agreement between MC Harry Associates, Inc. and the Town of Miami Lakes for LEED Certification services amending the Project Agreement adopted by Resolution 07-515 in connection with its development of architectural, structural, mechanical, electrical and plumbing design drawings for the Royal Oaks Park Community Center (the "Amendment"), a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, is approved.

**Section 3. Authorization of Town Manager.** The Town Manager and/or his designee and the Town Attorney are authorized to take all actions necessary to implement the terms and conditions of the Amendment.

**Section 4. Authorization of Fund Expenditure.** Notwithstanding the limitations imposed upon the Town Manager pursuant to the Town's Purchasing Procedures Ordinance, the Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Amendment, including any requirements pursuant to the Miami-Dade County Building Better Communities General Obligation Bond Program.

**Section 5. Execution of Amendment.** The Town Manager is authorized to execute the Amendment on behalf of the Town, to execute any required agreements and/or documents to implement the terms and conditions of the Amendment and to execute any extensions and/or amendments to the Amendment, subject to the approval as to form and legality by the Town Attorney.

**Section 6. Effective Date.** This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 9 day of Oct., 2007.

Motion to adopt by Mary Collins, second by Nancy Simon.

FINAL VOTE AT ADOPTION

Mayor Wayne Slaton	<u>yes</u>
Vice Mayor Mary Collins	<u>yes</u>
Councilmember Roberto Alonso	<u>yes</u>
Councilmember Robert Meador	<u>yes</u>
Councilmember Michael Pizzi	<u>yes</u>
Councilmember Richard Pulido	<u>yes</u>
Councilmember Nancy Simon	<u>yes</u>

Wayne Slaton  
Wayne Slaton  
MAYOR

ATTEST:

Debra Eastman  
Debra Eastman, MMC  
TOWN CLERK

Approved as to form and legality for the use and benefit of the Town of Miami Lakes only:

Weiss, Serota, Helfman, Pastoriza, Cole & Boniske  
Weiss, Serota, Helfman, Pastoriza,  
Cole & Boniske, P.L.  
TOWN ATTORNEY

Exhibit A

**PROJECT AGREEMENT**

Between

TOWN OF MIAMI LAKES, FLORIDA

And

M.C. HARRY AND ASSOCIATES, INC.

for

Work Authorization No. 01A-07 Amendment

ROYAL OAKS PARK COMMUNITY CENTER  
LEED CERTIFICATION SERVICES

PROJECT AGREEMENT

Between

THE TOWN OF MIAMI LAKES, FLORIDA

And

M.C. HARRY AND ASSOCIATES, INC.

For

Work Authorization No. 01A-07 Amendment

ROYAL OAKS PARK COMMUNITY CENTER  
LEED CERTIFICATION SERVICES

Pursuant to the provisions contained in the "Professional Services Agreement" between the TOWN OF MIAMI LAKES, FLORIDA (the "TOWN") and M.C. HARRY AND ASSOCIATES, INC., ("CONSULTANT") dated \_\_\_\_\_, this Project Agreement authorizes the CONSULTANT to provide the services as set forth below. Unless otherwise provided for herein, the defined term "TOWN" shall also include the Town Manager or his or her designated representative.

The TOWN and CONSULTANT agree as follows:

**SECTION 1. SCOPE OF SERVICES**

1.1 The CONSULTANT shall provide professional services for activities related to the pursuit of Leadership in Energy and Environmental Design (LEED) 'threshold' level certification for the Royal Oaks Park Community Center project. To Achieve a LEED 'threshold' rating measured against the latest version of LEED NC (new construction) 2.2, a minimum of 26 credits must be reviewed and approved by the U.S. Green Building Council (USGBC) in addition to meeting seven separate prerequisites.

1.2 The "Scope of Services" and "Project Schedule" and tasks to be provided by the CONSULTANT for this Project are those services and tasks as set forth herein, and listed in Exhibit "1" attached hereto.

1.3 The TOWN may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes must be contained in a written change order executed by the parties in accordance with the provisions of the Professional Services

Agreement, prior to any deviation from the terms of the Project Agreement, including the initiation of any extra work.

## **SECTION 2. DELIVERABLES**

2.1 As part of the Scope of Services and Project Schedule, the CONSULTANT shall provide to the TOWN the following Deliverables:

Documents necessary for submittal to USGBC as the application for LEED certification

## **SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE**

3.1 **Term.** This Project Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect (the "Effective Date") until completion of construction of the Royal Oaks Park Community Center, unless otherwise terminated pursuant to Section 6 or other applicable provisions of this Project Agreement. The Town Manager, in his sole discretion, may extend the term of this Agreement through written notification to the CONSULTANT. Such extension shall not exceed 30 days. No further extensions of this Agreement shall be effective unless authorized by the TOWN Council.

3.2 **Commencement.** The CONSULTANT'S Scope of Services under this Project Agreement and the time frames applicable to this Project Agreement shall commence upon the date this Agreement is executed by both parties. The CONSULTANT shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. CONSULTANT must receive written notice from the Town Manager prior to beginning the performance of the Scope of Services.

3.3 **Contract Time.** Upon execution of this Project Agreement, the CONSULTANT shall commence the Scope of Services to the TOWN on the Commencement Date, and shall continuously perform Scope of Services to the TOWN, without interruption, in accordance with the time frames set forth in the "Project Schedule," a copy of which is attached and incorporated into this Agreement as Exhibit "1". The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project or the date of actual completion of the Project, whichever shall last occur, shall constitute the Contract Time.

3.4 **Time is of the Essence.** All limitations of time set forth in this Project Agreement are of the essence.

## **SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION**

4.1 **Lump Sum Compensation.** The TOWN agrees to pay the CONSULTANT as compensation for performance of the Scope of Services described in Exhibit "1" a total Lump Sum Fee of \$32,250 pursuant to the Payment Schedule as defined and set forth in Exhibit "2" attached hereto and made a part hereof (the "Payment Schedule").

4.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: Fundamental Commissioning Agent; Fees required to be paid to USGBC for certification (project registration, design review fee, construction review fee). All document reproductions are also reimbursable, at a rate approved by the TOWN.

4.3 **Payment for Additional/Reimbursable Services.** Payment for Additional/Reimbursable Services may be requested monthly in proportion to the services performed. When such services are authorized as an hourly rate, the CONSULTANT shall submit for approval a duly certified invoice, giving names, classification, salary rate per hour, hours worked and total charge for all personnel directly engaged on a project or task. The CONSULTANT shall attach to the invoice all supporting data for payments made to Subconsultants engaged on the Project. In addition to the invoice, the CONSULTANT shall, for Hourly Rate authorizations, submit a progress report giving the percentage of completion of the Project development and the total estimated fee to completion.

## **SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT**

### **5.1 Invoices**

5.1.1 **Lump Sum Compensation and Reimbursable Expenses.** CONSULTANT shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished in accordance with the Payment Schedule set forth in Exhibit "2", to this Project Agreement. Invoices for each phase shall not exceed amounts allocated to each phase of the Project plus reimbursable expenses accrued during each phase. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the TOWN. The TOWN shall pay CONSULTANT within thirty (30) calendar days of approval by the Town Manager of any invoices submitted by CONSULTANT to the TOWN.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the TOWN for payment to the CONSULTANT is disputed, or additional backup documentation is required, the TOWN shall notify the CONSULTANT within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONSULTANT shall provide the TOWN with additional backup documentation within five (5) working days of the date of the TOWN'S notice. The TOWN may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The TOWN, at its sole discretion, may pay to the CONSULTANT the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the TOWN becomes credibly informed that any representations of the CONSULTANT, provided pursuant to Subsection 5.1,

are wholly or partially inaccurate, or in the event that the CONSULTANT is not in compliance with any term or condition of this Project Agreement, the TOWN may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the TOWN's reasonable satisfaction.

5.4 **Final Payment.** Submission of the CONSULTANT'S invoice for final payment and reimbursement shall constitute the CONSULTANT'S representation to the TOWN that, upon receipt from the TOWN of the amount invoiced, all obligations of the CONSULTANT to others, including its consultants, incurred in connection with the Project, shall be paid in full. The CONSULTANT shall deliver to the TOWN all documents requested by the TOWN evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the TOWN by the CONSULTANT.

## **SECTION 6. TERMINATION/SUSPENSION**

6.1 **For Cause.** This Project Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Project Agreement or causes it to be terminated by the TOWN, the CONSULTANT shall indemnify the TOWN against any loss pertaining to this termination. In the event that the CONSULTANT is terminated by the TOWN for cause and it is subsequently determined by a court by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Subsection 6.2 of this Project Agreement and the provision of Subsection 6.2 shall apply.

6.2 **For Convenience.** This Project Agreement may be terminated by the TOWN for convenience upon fourteen (14) calendar days' written notice to the CONSULTANT. In the event of termination, the CONSULTANT shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subconsultant obligations. The CONSULTANT shall be compensated for all services performed to the satisfaction of the TOWN and for reimbursable expenses incurred prior to the date of termination. The CONSULTANT shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of Subsection 5.1 of this Project Agreement. Under no circumstances shall the TOWN make any payment to the CONSULTANT for services which have not been performed.

6.3 **Assignment upon Termination.** Upon termination of this Project Agreement, a copy of all of the CONSULTANT'S work product shall become the property of the TOWN and the CONSULTANT shall, within ten (10) working days of receipt of written direction from the TOWN, transfer to either the TOWN or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CONSULTANT pertaining to this Project



Agreement. Further, upon the TOWN'S request, the CONSULTANT shall assign its rights, title and interest under any subcontractor's agreements to the TOWN.

6.4 **Suspension for Convenience.** The TOWN shall have the right at any time to direct the CONSULTANT to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to ninety (90) calendar days. If any such suspension is directed by the TOWN, the CONSULTANT shall immediately comply with same. In the event the TOWN directs a suspension of performance as provided for herein through no fault of the CONSULTANT, the TOWN shall pay to the CONSULTANT its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for any such suspension.

**SECTION 7. INCORPORATION OF TERMS AND CONDITIONS OF PROFESSIONAL SERVICE AGREEMENT**

7.1 This Project Agreement incorporates the terms and conditions set forth in the Professional Services Agreement dated \_\_\_\_\_ between the parties as though fully set forth herein. In the event that any terms or conditions of this Project Agreement conflict with the Professional Services Agreement, the provisions of this specific Project Agreement shall prevail and apply.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.]

**ATTEST:**

**TOWN OF MIAMI LAKES**

\_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_  
Alex Rey, Town Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND RELIANCE OF THE  
TOWN OF MIAMI LAKES, FLORIDA, ONLY:**

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

**ATTEST:**

**M.C. HARRY AND ASSOCIATES, INC.**

\_\_\_\_\_  
Assistant Secretary

By: \_\_\_\_\_  
Thomas M. Carlson  
President

\_\_\_\_\_  
Please type name of Assistant Secretary

Date: \_\_\_\_\_

(CORPORATE SEAL)

**WITNESSES:**

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

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

## Exhibit "1"

### **Scope of Services / Project Schedule**

The CONSULTANT shall provide professional services necessary to implement the process leading to LEED certification for the Royal Oaks Park Community Center project.

#### LEED Scope of Services – Design and Construction Phase Overview

To Achieve a LEED ‘threshold’ rating measured against the latest version of LEED NC (new construction) 2.2, a minimum of 26 credits must be reviewed and approved by USGBC in addition to meeting seven separate prerequisites. Although the A/E does not guarantee any specific rating from the USGBC, the entire design team will strive to achieve a ‘threshold’ rating for this project.

In the event that the USGBC does not grant the targeted points listed herein, the design team will be required to solicit alternative points from other categories which may result in additional fees due to potential design changes required to qualify for such points. Should this condition arise CONSULTANT shall document and submit a separate request for additional compensation.

Following is our additional services fee proposal for activities related to the pursuit of LEED ‘threshold’ level certification for the project.

#### I. Scope of Services.

##### 1. Phase 1.

##### 1.1 LEED Strategy Review.

1.1.1 The CONSULTANT will meet with the Owner, Civil Engineers and Fundamental Commissioning Agent to brainstorm solutions to meet the building user’s requests and the sustainability vision for the building’s design. Ideally, this review session would be held prior to the start of conceptual design, but can be done prior to the start of the design documentation phase.

##### 1.2 Phase 1 – Deliverables. Document the final agreed strategy for LEED certification

1.3 Schedule. This task will begin with the Notice to Proceed and end with the conclusion of the LEED strategy review session. This task is expected to take no more than 10 calendar days

2. Phase 2.

2.1 Administer Project Registration with USGBC and Documentation for LEED Certification

- 2.1.1 The CONSULTANT will provide consulting services to help ‘harvest’ every credit possible including one credit for accreditation, and up to four credits under the Innovation in Design category.
- 2.1.2 The CONSULTANT will be responsible for administering the certification process during design documentation and construction phase of the project. The responsibility for creating/collecting the required credit documentation will be assigned to the appropriate design and construction phase team members

2.2 Phase 2 – Deliverables. USGBC submittal documents as required for LEED certification.

2.3 Schedule. This task is an on-going task that will begin with the Notice to Proceed and end with the completion of construction of the project.

3. Phase 3.

3.1 Energy Modeling.

- 3.1.1 The CONSULTANT shall provide professional engineering services to provide energy modeling to demonstrate compliance with ASHRAE Standard 90.1, for the building’s projected energy use, in order to qualify for LEED certification under the Energy and Atmosphere prerequisite.
- 3.1.2 The CONSULTANT shall strive to earn up to ten extra credits if energy savings above and beyond the 90.1 Standard can be demonstrated through energy modeling.
- 3.1.3 This modeling must be performed in accordance with the US Department of Energy’s DOE-2 methodology.
- 3.1.4 The CONSULTANT shall include the base 90.1 compliant model, plus two alternate models, demonstrating additional energy savings.
- 3.1.5 Additional “what-if” energy efficiency/conservation strategies can be modeled at an additional cost.

3.2 Deliverables. Energy Model documents as required for USGBC submittal.



3.3 Schedule. This task will begin during the design phase of the project and end with the conclusion of the modeling task. This task is expected to take no more than 21 calendar days

II. Reimbursable Expense Detail. The following items detail costs and expenses that shall be provided as a reimbursable expense.

1. Fundamental Commissioning Agent.

1.1 This is one of the 7 prerequisites leading to LEED Certification of the building. Commissioning helps the owner ensure that both design and construction adhere to the owner's original vision, and to assist the owner to operate and maintain the building systems as the design intended. Commissioning should be performed by individuals that are NOT directly involved in the design and construction of the building. The USGBC has ruled that, as a minimum, the HVAC systems and equipment, energy management and lighting systems, and domestic hot water systems must be commissioned.

1.2 The Fundamental Commissioning agent will be retained to perform the following tasks

1.2.1 review the owner's project requirements and the basis of design documentation

1.2.2 assist the design team in incorporating commissioning requirements into the construction documents

1.2.3 develop and utilize a commissioning plan

1.2.4 verify installation, functional performance of each commissioned system

1.2.5 complete a commissioning report

III. LEED Point Summary. LEED Threshold Certification is based on designing to and achieving measured results for minimum of 26 LEED credits. There are a total of 69 possible credits, and there is no guarantee that the USGBC will grant a particular point for a submitted design. The CONSULTANT has established the following initial 28 LEED credits which will be targeted in the pursuit of LEED 'threshold' level certification for the project.

I. Sustainable Sites:

LEED SS Prerequisite 1 – construction activity pollution prevention

1. LEED SS Credit 4.1 – alternative transportation, public transportation access

2. LEED SS Credit 4.2 – alternative transportation, bike storage + changing rooms

3. LEED SS Credit 4.3 – alternative transportation, low emitting & fuel-efficient vehicles

4. LEED SS Credit 6.1 – storm water design quantity control

5. LEED SS Credit 8 – light pollution reduction

II. Water Efficiency:

6. LEED WE Credit 1.1 – water efficient landscaping, reduce by 50%

7. LEED WE Credit 3.1 – water use reduction, 20% reduction

8. LEED WE Credit 3.2 – water use reduction, 30% reduction

III. Energy & Atmosphere:

- LEED EA Prerequisite 1 – fundamental commissioning third party oversight (Reimbursable)
- LEED EA Prerequisite 2 – minimum energy performance
- LEED EA Prerequisite 3 – fundamental refrigerant management
- 9 + 10. LEED EA Credit 1 – optimize energy performance modeling – 14%

IV. Materials & Resources:

- LEED MR Prerequisite 1 – storage and collection of Recyclables
- 11. LEED MR Credit 2.1 – Construction Waste Management divert 50% of debris
- 12. LEED MR Credit 4.1 – recycled content 10% (post-consumer + ½ pre-consumer)
- 13. LEED MR Credit 5.1 – regional materials 10% extracted, processed & manufactured
- 14. LEED MR Credit 5.2 – regional materials 20% extracted, processed & manufactured
- 15. LEED MR Credit 7.0 – certified wood 50% of all wood used on project

V. Indoor Environmental Quality:

- LEED EQ Prerequisite 1 – minimum IAQ performance
- LEED EQ Prerequisite 2 – environmental tobacco smoke control
- 16. LEED EQ Credit 1.0 – outdoor air delivery monitoring
- 17. LEED EQ Credit 3.1 – construction IAQ mgt. plan during construction
- 18. LEED EQ Credit 4.1 – low-emitting materials adhesives and sealants
- 19. LEED EQ Credit 4.2 – low emitting materials paints and coatings
- 20. LEED EQ Credit 4.3 – low emitting materials carpet systems
- 21. LEED EQ Credit 6.1 – controllability of systems lighting
- 22. LEED EQ Credit 6.2 – controllability of systems, thermal comfort
- 23. LEED EQ Credit 7.1 – thermal comfort design
- 24. LEED EQ Credit 7.2 – thermal control, verification
- 25. LEED EQ Credit 8.2 – daylight & views: Views for 90% of spaces

VI. Innovation & Design Process:

- 26. LEED ID Credit 1.1 – innovation in design green housekeeping
- 27. LEED ID Credit 1.2 – innovation in design green pest control
- 28. LEED ID Credit 1.3 – innovation in design low emitting furniture
- 29. LEED ID Credit 2.0 – Use of a LEED accredited professional

## EXHIBIT "2"

### PAYMENT SCHEDULE

Fees shall be earned proportional to the tasks and phases as completed. CONSULTANT shall invoice the TOWN monthly as a percentage of the task/phase completed based on the following schedule:

#### 1. LEED Certification Services:

Phase 1	LEED Strategy Review	\$1,500.00
Phase 2	Administer Registration	\$20,750.00
Phase 3	Energy Modeling	\$10,000.00

**Total for LEED Certification Services      \$32,250.00**

#### 2. Estimated Reimbursable Expenses:

Fundamental Commissioning Agent:	\$19,400.00
USGBC project registration fee:	\$450.00
USGBC Certification Design Review fee:	\$1,250.00
USGBC Construction Review fee:	\$500.00

**Total Estimated Reimbursable Expenses      \$21,600.00**