

RESOLUTION NO. 07- 601

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA APPROVING THE PROFESSIONAL SERVICES AGREEMENT BETWEEN MILLER LEGG AND THE TOWN; AUTHORIZING TOWN OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE PROFESSIONAL SERVICES AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE PROFESSIONAL SERVICES AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on May 29, 2007, the Town of Miami Lakes (the "Town") issued a Request for Qualifications (the "RFQ") for Landscape Architectural Services as provided for under Section 287.055, Florida Statutes; and

WHEREAS, on June 22, 2007, the Town received nine (9) proposals from firms which were reviewed by the Town's Selection Committee; and

WHEREAS, on July 17th and 19th, seven (7) firms gave a presentation to the Selection Committee and thereafter the Selection Committee ranked the most highly qualified firms, with Miller Legg being ranked number one (1); and

WHEREAS, the Town Council approved the Selection Committee's ranking of the most highly qualified firms via Resolution No. 07-569; and

WHEREAS, as required under Section 287.055(5), Florida Statutes, the Town negotiated an agreement for professional services with the most highly qualified firm, Miller Legg; and

WHEREAS, the Town Council authorizes the Town to enter into an agreement for professional services with Miller Legg to perform landscape architectural services for 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 Agreement. The Professional Services Agreement between the Town and Miller Legg (the "Agreement"), 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 Officials. The Town Manager and Town Attorney are authorized to take all steps necessary to implement the terms and conditions of the Agreement.

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 Agreement.

Section 5. Execution of Agreement. The Town Manager is authorized to execute the Agreement on behalf of the Town, to execute any required agreements and/or documents to implement the terms and conditions of the Agreement and to execute any extensions and/or amendments to the Agreement, 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 11 day of Dec., 2007.

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

FINAL VOTE AT ADOPTION

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

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

EXHIBIT A

PROFESSIONAL SERVICES

A G R E E M E N T

Between

TOWN OF MIAMI LAKES, FLORIDA

And

MILLER LEGG

PROFESSIONAL SERVICES

A G R E E M E N T

Between

TOWN OF MIAMI LAKES, FLORIDA

And

MILLER LEGG

THIS AGREEMENT is made between the TOWN OF MIAMI LAKES, FLORIDA, a Florida municipal corporation, (hereinafter referred to as the "TOWN") and MILLER LEGG, a Florida corporation authorized to do business in the State of Florida, (hereinafter referred to as the "CONSULTANT"), whose principal place of business is 1800 North Douglas Road, Suite 200, Pembroke Pines, Florida 33024-3200

WHEREAS, pursuant to Section 287.055, Florida Statutes, the TOWN requested qualifications from qualified architectural firms and selected the CONSULTANT to provide landscape architectural services; and

WHEREAS, the CONSULTANT is willing and able to perform such professional services for the TOWN within the basic terms and conditions set forth in this Agreement (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize the CONSULTANT to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent Supplemental Agreements for Specific Projects when required.

NOW THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the TOWN and CONSULTANT agree as follows:

SECTION 1. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

1.1 **Compensation:** The total amount paid by the TOWN for the CONSULTANT'S professional services for a Specific Project, exclusive of Reimbursable Costs/Services.

1.2 **Reimbursable Costs/Services:** are those authorized by the TOWN in writing in addition to the Compensation and consist of actual expenditures made by CONSULTANT and directly attributable to the Specific Project.

- a. Reimbursable Costs include long-distance communications, application and permit fees paid for securing approval of authorities having jurisdiction over the Specific Project; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents; postage; travel expenses; and subconsultant's fees.
- b. Reimbursable Services shall be provided by the CONSULTANT at the TOWN'S request and with the prior written approval of the cost of the Reimbursable Services by the Town Manager or if the cost exceeds the Town Manager's authority, with the prior written approval of the Town Council. The following are Reimbursable Services:
 - i. Surveys of sites, giving boundary dimensions, locations of existing structures and/or trees, the grades and lines of street, pavement, and adjoining properties; the rights, restrictions, easements, boundaries, and topographic data of a building site, and such information as it has relative to sewer, water, gas and electrical services.
 - ii. Soil borings or test pits; chemical, mechanical, structural, or other tests when deemed necessary; also, if required, an appropriate professional interpretation thereof and recommendations. The CONSULTANT shall recommend necessary tests to the TOWN.
 - iii. Field investigations as necessary to obtain sufficient information to perform CONSULTANT'S services.
- c. All reimbursements shall be approved pursuant to receipts or proof of expenditures provided by the CONSULTANT.

1.3 **Specific Project Agreement or Project Agreement:** an agreement to provide services for a Specific Project.

1.4 **Subconsultant Fee:** the direct and actual cost of the Subconsultant with no markup, as reflected by actual invoices of the Subconsultant.

1.5 **Travel Expenses:** authorized travel and lodging and meals incurred directly for the Specific Project for travel outside of Miami-Dade County (subject to the limitations imposed

by Chapter 112.601, Florida Statutes and the Town's per diem regulations). No overnight travel or out-of-town travel outside of Miami-Dade County shall be reimbursed unless the CONSULTANT has secured advance written authorization for such travel from the Town Manager. Reimbursement for such authorized travel expenses shall be at the rates provided for in Chapter 112, Florida Statutes, as may be amended from time to time, which rates shall by reference be made a part of this Agreement as though set forth in full.

SECTION 2. SPECIFIC PROJECTS/SCOPE OF SERVICES

2.1 In accordance with the Consultants' Competitive Negotiation Act, the CONSULTANT may provide professional services to the TOWN for Specific Projects as authorized from time to time by either the Town Council or Town Manager as authorized by subsection 2.5. The TOWN may elect to have the CONSULTANT provide any and all levels of landscape architectural services including site design, design development, recreational and urban planning, natural resource management, landscape maintenance design, construction documents and construction administration. The TOWN may elect to have the CONSULTANT provide design criteria documents if the TOWN decides to implement a project by the design/build approach. All projects will be coordinated with the Director of Planning and Zoning, Director of Parks and Recreation, Town Engineer and will require close coordination with other TOWN departments.

2.2 When the need for services for a Specific Project occurs, the Town Manager may, enter into negotiations with the CONSULTANT for that Specific Project under the terms and conditions of this Agreement. The TOWN shall initiate said negotiations by providing the CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide professional services for the Specific Project. The CONSULTANT shall prepare a proposal which includes those subjects specified in subsection 2.3 (a) through (g). The Town Manager and CONSULTANT shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 2.3.

2.3 The TOWN and CONSULTANT shall utilize as the Agreement for each Specific Project a Project Agreement, a copy of which is attached and incorporated into this Agreement as Exhibit "A". Each Project Agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:

- a. The Scope of Services;
- b. The Deliverables;
- c. The Time and Schedule of Performance and Term;
- d. The amount of Compensation;
- e. The Personnel assigned to the Specific Project;

- f. Any additional contractual requirements of Section 287.055, Florida Statutes, for Consultant Agreements; and
- g. Any modifications to the Project Agreement, if mutually agreed upon by the parties.

2.4 The professional services to be rendered by the CONSULTANT shall commence subsequent to the execution of each Project Agreement. Performance of work by CONSULTANT prior to execution of a Project Agreement shall be at CONSULTANT'S sole risk. The CONSULTANT agrees to complete each Task within the time stipulated in the Project Agreement.

2.5 The Town Manager is authorized to negotiate and execute a Project Agreement for Specific Projects in which the CONSULTANT'S services do not exceed \$10,000.00.

2.6 The Project Agreement for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2.7 CONSULTANT'S direction under this Agreement shall be derived solely from the TOWN Manager or his or her designee.

2.8 Time is of the essence with respect to the performance of the CONSULTANT'S services within the time limits established in the Project Agreements. The CONSULTANT shall not, except for cause beyond the reasonable control of the CONSULTANT, exceed time limits established by the Project Agreements. Any adjustments to the schedule must be approved in writing by TOWN and must be requested in writing by the CONSULTANT within ten (10) calendar days after the occurrence upon which the CONSULTANT'S request for adjustment is based.

SECTION 3. TERM/TERMINATION

3.1 **Term of Agreement.** – This Continuing Services Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect, unless and until terminated pursuant to Section 3.2 or other applicable sections of this Agreement. Each Project Agreement shall specify the period of service agreed to by the TOWN and CONSULTANT for services to be rendered under said Project Agreement.

3.2 **Termination – For Convenience** – This Continuing Services Agreement may be terminated by the TOWN for convenience upon seven (7) calendar days written notice to the CONSULTANT.

3.3 **Effect on Project Agreement** – Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a

Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3.4 **Non-Exclusive Agreement** - Notwithstanding the provisions of Subsection 3.1, the Town Manager may issue requests for proposals for this professional discipline at any time and may utilize the services of any other consultants retained by the TOWN under similar Continuing Services Agreements. Nothing in this Agreement shall be construed to give the CONSULTANT a right to perform services for a Specific Project.

SECTION 4. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

4.1 **Changes Permitted.** Changes in the Scope of Services of a Project Agreement consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the TOWN by Change Order without invalidating the Project Agreement.

4.2 **Change Order Defined.** Change Order shall mean a written order to the CONSULTANT executed by the TOWN, issued after execution of a Project Agreement, authorizing and directing a change in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Change Order.

4.3 **Effect of Executed Change Order.** The execution of a Change Order by the TOWN and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT's Agreement to the ordered changes in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The CONSULTANT, by executing the Change Order, waives and forever releases any claim against the TOWN for additional time or compensation for matters relating to or arising out of or resulting from the Scope of Services included within or affected by the executed Change Order.

4.4 **Authority to Execute Changes or Requests for Additional Services.** The Town Manager is authorized to negotiate and execute Change Orders, in an amount not to exceed \$10,000.00. Changes, which exceed \$10,000.00, shall be approved by the TOWN Council.

SECTION 5. SURVIVAL OF PROVISIONS

5.1 Any terms or conditions of either this Agreement or any subsequent Project Agreement that require acts beyond the date of the term of either Agreement, shall survive termination of the Agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 6. TOWN'S RESPONSIBILITIES

6.1 Assist CONSULTANT by placing at its disposal all available information as may be requested in writing by the CONSULTANT and allow reasonable access to all pertinent information relating to the services to be performed by CONSULTANT.

6.2 Furnish to CONSULTANT, at the CONSULTANT'S written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by CONSULTANT, in possession of the TOWN.

6.3 Arrange for access to and make all provisions for CONSULTANT to enter upon public property as required for CONSULTANT to perform services.

SECTION 7. CODE OF ETHICS

7.1 Landscape Architectural Services shall be provided in accordance with professional ethics provided in Sections 481.301 - 481.329, Florida Statutes "Landscape Architecture."

7.2 CONSULTANT warrants and represents that its employees will abide by the Conflict of Interest and Code of Ethics Ordinances set forth in Section 2-11.1 of the Town Code and Section 2-11.1 of the Miami-Dade County Code, as these codes may be amended from time to time.

SECTION 8. POLICY OF NON-DISCRIMINATION/WAGES

8.1 The CONSULTANT shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability or any other protected class in the performance of work under this Agreement.

8.2 The CONSULTANT shall comply with the wage provisions of Section 287.055, Florida Statutes. If the project is subject to federal or state grant funding that requires specific wage and non-discrimination provisions, the CONSULTANT shall be required to comply with the same.

SECTION 9. OWNERSHIP OF DOCUMENTS/DELIVERABLES

9.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photograph specifications, and all other data prepared for the TOWN or furnished by the CONSULTANT pursuant to any Project Agreement shall become the property of the TOWN. The CONSULTANT shall be permitted to retain one set of the documents referenced herein for information and reference in connection with the TOWN'S use and occupancy of the Project. CONSULTANT shall deliver within ten (10) calendar days after receipt of written notice of said documents to the Town.

9.2 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Specific Project is not to be construed as publication in derogation of the CONSULTANT'S rights.

9.3 All subcontracts for the preparation of the documents referred to in Section 9.1, entered by CONSULTANT for each Specific Project shall provide that all such documents and rights obtained from such documents shall become the property of the TOWN.

9.4 CONSULTANT agrees not to divulge, furnish or make available to any third person, firm or organization, without TOWN'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, or if reasonably necessary for the CONSULTANT to defend itself from any suit or claim, any non-public information concerning the services to be rendered by CONSULTANT hereunder, and CONSULTANT shall require all of its employees, agents, Subconsultants and subcontractors to comply with the provisions of this paragraph.

9.5 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.

SECTION 10. RECORDS/AUDITS

10.1 CONSULTANT shall maintain and require Subconsultants to maintain, complete and correct records, books, documents, papers and accounts pertaining to the Specific Project. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Town Manager or any authorized TOWN representative with reasonable notice and shall be kept for a period of three (3) years after the completion of each Project Agreement. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the TOWN of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the TOWN.

10.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable.

10.3 Refusal of the CONSULTANT to comply with the provisions of Sections 10.1 or 10.2 shall be grounds for immediate termination for cause by the TOWN of this Agreement or any Project Agreement.

SECTION 11. NO CONTINGENT FEE

11.1 CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the CONSULTANT violates this provision, the TOWN shall have the right to terminate this Agreement or any Project 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.

SECTION 12. INDEPENDENT CONTRACTOR

12.1 The CONSULTANT is an independent contractor under this Agreement and any Project Agreements. Personal services provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the TOWN. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement or any Project Agreements shall be those of the CONSULTANT.

SECTION 13. ASSIGNMENT; AMENDMENTS

13.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the TOWN.

13.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 14. INDEMNIFICATION/HOLD HARMLESS

14.1 Pursuant to Section 725.08, Florida Statutes, the CONSULTANT shall indemnify and hold harmless the TOWN, and its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT, the

Subconsultant and other persons employed or utilized by the CONSULTANT in the performance of this Agreement. The CONSULTANT'S obligation under this paragraph shall not be limited in any way by the agreed upon contract price, or the CONSULTANT'S limit of, or lack of, sufficient insurance protection.

14.2 The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT and/or any Subconsultants under worker's compensation acts, disability benefit acts, or other employee benefit acts.

14.3 To the extent this indemnification clause or any other indemnification clause in this Agreement does not comply with Chapter 725, Florida Statutes, as it may be subsequently amended, this Article and all aspects of the Agreement documents shall hereby be interpreted as the parties' intention for the indemnification clauses and Agreement Documents to comply with Chapter 725, Florida Statutes, as may be amended.

14.4 The CONSULTANT shall not specify or allow any SubConsultant to specify a particular design, process or product that infringes upon any patent. The CONSULTANT shall indemnify and hold TOWN and its officers and employees harmless from any loss, cost or expense, including reasonable attorney's fees and costs incurred, on account thereof if the CONSULTANT violates the requirements of this Section.

SECTION 15. INSURANCE

The CONSULTANT shall secure and maintain throughout the duration of this Agreement and any Project Agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the TOWN against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the TOWN, its officials, employees, agents and volunteers. Any insurance maintained by the TOWN shall be in excess of the CONSULTANT'S insurance and shall not contribute to the CONSULTANT'S insurance. The insurance coverages shall include a minimum of:

15.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident.

15.2 **Automobile and Vehicle Liability Insurance:** The policy must contain minimum limits of liability as follows or \$500,000.00 combined single limit:

- Each person: \$500,000.00;
- Bodily Injury: \$500,000.00; and

- Property Damage: \$500,000.00 each occurrence
- Policy must provide coverage for non-owned and hired automobiles

15.3 **Commercial General Liability.** The policy must contain minimum limits of liability as follows or \$1,000,000.00 combined single limit:

- Bodily Injury: \$1,000,000.00; and
- Property Damage: \$1,000,000.00 each occurrence

15.4 **Professional Liability:** The CONSULTANT shall furnish professional liability in an amount not less than \$500,000.00 per occurrence.

15.5 **Certificate of Insurance:** Prior to the execution of this Agreement, CONSULTANT shall provide the Town Manager with evidence of insurability from the CONSULTANT'S Insurance Carrier or a Certificate of Insurance. Prior to execution of any Project Agreement, the CONSULTANT shall provide to the Town Manager, Certificates of Insurance evidencing the required insurance coverages. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and any Project Agreement and shall state that such insurance is as required by this Agreement and any Project Agreement. The TOWN reserves the right to require the CONSULTANT to provide a certified copy of such policies, upon written request by the TOWN. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the TOWN before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town Manager.

15.6 All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Town Manager may require the CONSULTANT, as a condition of execution of a particular Project Agreement, to provide a bond or other monetary consideration to cover the CONSULTANT'S deductible for Professional Liability Insurance.

SECTION 16. REPRESENTATIVE OF TOWN AND CONSULTANT

16.1 **TOWN Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The TOWN designates the Town Manager or his or her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

16.2 **CONSULTANT Representative.** CONSULTANT shall inform the TOWN Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 17. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

17.1 If either the TOWN or CONSULTANT is required to enforce the terms of this Agreement or any Project Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.

17.2 In the event of any litigation arising out of this Agreement or Project Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

SECTION 18. ALL PRIOR AGREEMENTS SUPERSEDED

18.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 19. CONSULTANT'S RESPONSIBILITIES

19.1 The CONSULTANT warrants that the services to be performed hereunder shall be performed by the CONSULTANT'S own staff, unless otherwise approved in writing by the TOWN. Said approval shall not be construed as constituting an Agreement between the TOWN and said other person or firm. The CONSULTANT'S services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing design professionals performing similar services in the same locality and under the same or similar circumstances and conditions.

19.2 The CONSULTANT represents that it possesses the requisite skills and shall follow the professional standards of the American Society of Landscape Architects ("ASLA"). The CONSULTANT agrees to use its skill and judgment in furthering the TOWN'S interests hereunder and CONSULTANT shall perform its services in accordance with the practice of the pertinent industry and as expeditiously as is consistent with reasonable skill and care. If at any time during the term of this Agreement or the construction of the Specific Project, it is determined that the CONSULTANT'S documents are incorrect, defective or fail to conform to the terms of this Agreement, upon written notification from the TOWN, the CONSULTANT shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the TOWN for any other services and expenses made necessary thereby, save

and except any costs which the TOWN would have otherwise paid absent the CONSULTANT'S error or omission. The TOWN'S approval, acceptance, use of or payment for all or any part of the CONSULTANT'S services shall in no way alter the CONSULTANT'S obligations or TOWN'S rights hereunder.

19.3 CONSULTANT agrees, within fourteen (14) calendar days of receipt of a written request from the TOWN, to promptly remove and replace any personnel employed or retained by the CONSULTANT, any Subconsultants or subcontractors or any personnel of any such sub-CONSULTANT or subcontractors engaged by the CONSULTANT to provide and perform services or work pursuant to the requirements of this Agreement or any Project Agreement, whom the TOWN shall request in writing to be removed, which request may be made by the TOWN.

19.4 If the CONSULTANT allows any Work to be performed knowing or when with the exercise of due care the CONSULTANT should have known it to be contrary to any such applicable, known and published laws, ordinances, rules, regulations or restrictions and fails to give TOWN written notice thereof prior to performance thereof, the CONSULTANT shall bear all costs, liabilities, and expenses arising therefrom, which costs, liabilities and expenses shall not be considered a part of the CONSULTANT'S fees or any other amounts due hereunder.

19.5 The CONSULTANT'S obligations under Paragraph 19.2 of this Agreement shall survive termination of this Agreement or any Project Agreement.

SECTION 20. SUBCONSULTANTS

20.1 In the event the CONSULTANT requires the services of any Subconsultants or other professional associates in connection with services covered by any Project Agreement, the CONSULTANT must secure the prior written approval of the Town Manager. The CONSULTANT shall utilize his/her best efforts to utilize Subconsultants where principal place of business is located within the Town of Miami Lakes, Florida.

20.2 All services provided by the Subconsultants shall be pursuant to appropriate Agreements between the CONSULTANT and the Subconsultants which shall contain provisions that preserve and protect the rights of the TOWN and the CONSULTANT under this Agreement. Each Subconsultant Agreement shall incorporate the terms of this Agreement, and shall include termination provisions that state that the Agreements may be terminated. TOWN shall not be responsible for termination expenses of any third parties.

20.3 Any subcontract with a Subconsultant shall afford to the CONSULTANT rights against the Subconsultant which correspond to those rights afforded to the TOWN against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.

20.4 No reimbursement shall be made to the CONSULTANT for any subconsultants that have not been previously approved by the TOWN for use by the CONSULTANT.

SECTION 21. NOTICES

Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of 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, to-wit:

FOR CONSULTANT:

MILLER LEGG
Attention: Michael D. Kroll, RLA
Vice President
1800 Douglas Road
Pembroke Pines, FL 33024
Telephone: (954) 436-7000
Facsimile: (954) 436-8664

FOR TOWN:

Town of Miami Lakes
Attention: Alex Rey, Town Manager
15700 N.W. 67th Avenue
Miami Lakes, Florida 33014
Telephone: (305) 364-6100
Facsimile: (305) 558-8511

With a copy to:

Nina L. Boniske, Esq.
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.,
Town Attorneys
2525 Ponce de Leon Boulevard
Suite 700
Miami, FL 33134
Phone: (305) 854-0800
Facsimile: (305) 854-2323

SECTION 22. TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract prices and any additions shall be adjusted to exclude any significant sums by which the TOWN determines the Specific Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one (1) year following the end of each Project Agreement.

SECTION 23. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement or any Project Agreement. Venue of any action to enforce this Agreement or any Project Agreement shall be in Miami-Dade County, Florida.

SECTION 24. GOVERNING LAW

This Agreement and any Project Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 25. HEADINGS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 26. EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits if not physically attached, should be treated as part of this Agreement, and are incorporated by reference.

SECTION 27. SEVERABILITY

If any provision of this Agreement or any Project Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement or any Project Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 28. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The TOWN, signing by and through its Town Manager, attested to by its TOWN Clerk, duly authorized to execute same and by CONSULTANT by and through its Michael D. Kroll, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

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ATTEST:

TOWN OF MIAMI LAKES

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:

MILLER LEGG

Assistant Secretary

By: 
Michael D. Kroll
Vice President

Please type name of Secretary

Date: 12.04.07

WITNESSES:

Print Name: _____

Print Name: _____

EXHIBIT "A"

**SAMPLE
PROJECT AGREEMENT**

Between

TOWN OF MIAMI LAKES, FLORIDA

And

MILLER LEGG

for

Work Authorization No. ____

[INSERT NAME OF PROJECT]

PROJECT AGREEMENT
Between
THE TOWN OF MIAMI LAKES, FLORIDA
And
MILLER LEGG.
For
Work Authorization No. _____
[INSERT NAME OF PROJECT]

Pursuant to the provisions contained in the Continuing Services Agreement between the TOWN OF MIAMI LAKES, FLORIDA (the "TOWN") and MILLER LEGG., ("CONSULTANT") dated _____, this Project Agreement authorizes the CONSULTANT to provide the services as set forth below:

The TOWN and CONSULTANT agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 The CONSULTANT shall provide landscape architectural services to the TOWN for the Project as described herein. [Insert project description]

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. [Insert scope of services here] and listed in Exhibit "1."

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 Continuing 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:

2.2 If at any time during Phases ___ through ___ the "Opinion Probable Construction Costs" exceeds the amount of \$ _____, at the Town Manager's request, the CONSULTANT shall revise the [Design] to fall below the Probable Cost. Such revision shall be submitted within the reasonable time frame established by the Town Manager.

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 _____, 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 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 the beginning the performance of services.

3.3 **Contract Time.** Upon execution of this Project Agreement, the CONSULTANT shall commence services to the TOWN on the Commencement Date, and shall continuously perform 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 All limitations of time set forth in this Agreement are of the essence.

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 **Lump Sum Compensation.** TOWN agrees to pay CONSULTANT as compensation for performance of all services described in Exhibit "2" \$ _____.

SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT

5.1 Invoices

5.1.1 Lump Sum Compensation and Reimbursable Costs/Services.

CONSULTANT shall submit invoices which are identified by the 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 Costs/Services 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 Project Schedule. 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 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 Costs/Services 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.

SECION 7. INCORPORATION OF TERMS AND CONDITIONS OF CONTINUING SERVICE AGREEMENT

7.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing 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 Continuing Services Agreement, the provisions of this specific Project Agreement shall prevail and apply.

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