

RESOLUTION No. 16-25

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, PURSUANT TO SECTION 2-323 (2) OF THE CITY CODE OF ORDINANCES, AUTHORIZING THE ENGAGEMENT OF THE GOLDSTEIN ENVIRONMENTAL FIRM TO PERFORM PROFESSIONAL BROWNFIELD REDEVELOPMENT SERVICES; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO AN AGREEMENT, SUBJECT TO APPROVAL BY THE CITY ATTORNEY AS TO FORM AND LEGAL SUFFICIENCY, TO PREPARE THE BROWNFIELD DESIGNATION DOCUMENTS FOR THE NW 62ND STREET PASSIVE PARK GREEN REUSE AREA PURSUANT TO FLORIDA'S BROWNFIELD REDEVELOPMENT ACT IN AN AMOUNT NOT TO EXCEED \$40,250.00; AUTHORIZING THE CITY MANAGER TO EXPEND FUNDS IN FURTHERANCE THEREOF; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Florida's Brownfield Redevelopment Act provides the public and private sectors with a series of regulatory and financial benefits to facilitate the environmental clean-up and reuse of properties with environmental conditions (the "Brownfield Program"); and

WHEREAS, the City of Doral (the "City") intends to use the Brownfield Program as a tool to address the naturally-occurring environmental conditions at the future site of the NW 62nd Street Passive Park; and

WHEREAS, participation in the Brownfield Program requires the designation of the NW 62nd Street Passive Park property as a brownfield area and development of a Brownfield Site Rehabilitation Agreement (BSRA) with Miami-Dade County Department of Regulatory and Economic Resources to qualify for the regulatory and financial incentive provided by the state brownfield statutes; and

WHEREAS, the City desires to engage the professional consulting services of "The

Goldstein Environmental Firm” (“Contractor”) to assist the city implement the brownfield area, development of the BSRA and related services for the NW 62nd Street Passive Park; and

WHEREAS, the administration has recommended that the City Council authorize the engagement of the Contractor and authorize the City Manager to negotiate and enter into an agreement with the Contractor for the provision of brownfield professional consulting services in an amount not to exceed \$40,250.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Authorization. Pursuant to section 2-323(2) of the City Code of Ordinance, the Engagement of the Goldstein Environmental Firm for the provision of professional brownfield services to prepare the brownfield designation documents for the “NW 62nd Street Passive Park Green Reuse Area” pursuant to “Florida Brownfield Redevelopment Act” in an amount not to exceed \$40,250 is hereby authorized. The Professional Service Agreement (the “Agreement or PSA” is attached as Exhibit “A”, which is incorporated herein and made a part hereof by this reference. The City Manager is authorized to negotiate and, subject to approval by the City Attorney as to form and legal sufficiency, enter into an Agreement with The Goldstein Environmental Firm. The City Manager is further authorized to expend budgeted funds in furtherance hereof.

Section 3. Implementation. The City Manager and the City Attorney are hereby authorized to take such further action as may be necessary to implement the

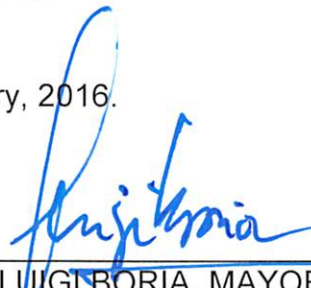
hereby authorized to take such further action as may be necessary to implement the purpose and provisions of this Resolution.

Section 4. Effective Date. This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Councilmember Cabrera who moved its adoption. The motion was seconded by Councilmember Ruiz and upon being put to a vote, the vote was as follows:

Mayor Luigi Boria	Yes
Vice Mayor Christi Fraga	Yes
Councilman Pete Cabrera	Yes
Councilwoman Ana Maria Rodriguez	Yes
Councilwoman Sandra Ruiz	Yes

PASSED AND ADOPTED this 27 day of January, 2016.



LUIGI BORIA, MAYOR

ATTEST:



CONNIE DIAZ, CMC
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE SOLE USE
OF THE CITY OF DORAL



WEISS, SEROTA, HELFMAN, COLE, & BIERMAN, PL
CITY ATTORNEY

EXHIBIT “A”

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF DORAL
AND
THE GOLDSTEIN ENVIRONMENTAL LAW FIRM P.A.
FOR
BROWNFIELD PROFESSIONAL CONSULTING SERVICES**

THIS AGREEMENT is made between **The Goldstein Environmental Law Firm**, a Florida corporation, (hereinafter the “Consultant”), and the **CITY OF DORAL, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, the Consultant and City, through mutual negotiation, have agreed upon a scope of services, schedule, and fee for providing Brownfield Professional Consulting Services (the “Project”); and

WHEREAS, the City desires to engage the Consultant to perform the services specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Consultant and the City agree as follows.

1. **Scope of Services/Deliverables.**

- 1.1 The Consultant shall furnish professional services to the City as set forth in the Scope of Services as specified in Exhibit “A,” attached to this Agreement and incorporated herein by this reference.
- 1.2 The “Scope of Services” includes a Project Schedule for the Project which includes a breakdown of tasks, timeline and deliverables to the City.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect for six months from the date of execution unless earlier terminated in accordance with Paragraph 8. The City Manager may extend the term of this Agreement up to an additional two (2) optional years by written notice to the Consultant
- 2.2 Consultant agrees that time is of the essence and Consultant shall complete each deliverable for the Project within the timeframes set forth in the Project Schedule, unless extended by the City Manager.

3. **Compensation and Payment.**

- 3.1 The Consultant shall be compensated in the following manner:

X A lump sum amount of \$40,250.00, regardless of the number of hours or length of time necessary for Consultant to complete the Scope of Services. Consultant shall not be entitled to any additional payment for any expenses incurred in completion of the Scope of Services. A breakdown of costs used to derive the lump sum amount, including but not limited to hourly rates, estimated travel expenses and other applicable rates, is specified in the Scope of Services. Upon completion of the work, Consultant shall submit its bill[s] for payment in a form approved by the City. The bill[s] shall identify the services completed and the amount charged.

3.2 The City shall pay Consultant in accordance with the Florida Prompt Payment Act and in accordance with the schedules specified in the Scope of Services.

3.3 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

4. **Subconsultants.**

4.1 The Consultant shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to the Project.

4.2 Any subconsultants used on the Project must have the prior written approval of the City Manager or his designee.

5. **City's Responsibilities.**

5.1 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 City.

5.2 Arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant (if applicable).

6. **Consultant's Responsibilities.**

6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Project as is ordinarily provided by a professional planner under similar circumstances. If at any time during

the term of this Agreement or within one year from the completion of the Project, it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the Scope of Services of the Project, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

7. **Conflict of Interest.**

7.1 To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, represent any private sector entities (developers, corporations, real estate investors, etc.), with regard to any City related matter.

8. **Termination.**

8.1 The City Manager without cause may terminate this Agreement upon thirty (30) days written notice to the Consultant, or immediately with cause.

8.2 Upon receipt of the City's written notice of termination, Consultant shall stop work on the Project.

8.3 In the event of termination by the City, the Consultant shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.

8.4 The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Project to the City, in a hard copy and electronic format specified by the City within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Insurance.**

The Consultant shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by Insurance Exhibit B.

9.5 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

10. **Nondiscrimination.**

10.1 During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

11. **Attorneys' Fees and Waiver of Jury Trial.**

11.1 In the event of any litigation arising out of this Agreement, each party shall be responsible for their attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

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

12. **Indemnification.**

12.1 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

12.2 The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.**

13.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City: Edward A. Rojas, City Manager
City of Doral, Florida

8401 NW 53rd Terrace
Doral, Florida 33166

With a Copy to: Daniel A. Espino, Esq.
Weiss, Serota, Helfman, Cole, Boniske & Bierman
City Attorney
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, Florida 33134

For The Consultant: The Goldstein Environmental Law Firm P.A.
One Southeast Third Avenue, Suite 2120
Miami, Florida 33131
Office: 305-777-1680

14. **Governing Law.**

14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Miami-Dade County, Florida, or the Southern District of Florida.

15. **Entire Agreement/Modification/Amendment.**

15.1 This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

16. **Ownership and Access to Records and Audits.**

16.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.

16.2 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Consultant involving transactions related to this Agreement. Consultant shall keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; provide the public with access to public records on the same terms

and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law; ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

16.3 The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

17. **Nonassignability.**

17.1 This Agreement shall not be assignable by Consultant unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Consultant, and such firm's familiarity with the City's area, circumstances and desires.

18. **Severability.**

18.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. **Independent Contractor.**

19.1 The Consultant and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. **Compliance with Laws.**

20.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

21. **Waiver**

21.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

22. **Survival of Provisions**

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

23. **Prohibition of Contingency Fees.**

23.1 The 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 it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. **Counterparts**

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

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same and by Consultant by and through its President, whose representative has been duly authorized to execute same.

Attest:

Connie Diaz, CMC
City Clerk

Approved As To Form and Legal Sufficiency for the Use
And Reliance of the City of Doral Only:

Dan Espino, City Attorney

CITY OF DORAL

By: _____

Edward A. Rojas

Its: City Manager _____

Date: _____

CONSULTANT

By: _____

Michael R. Goldstein

Its: President _____

Date: _____

EXHIBIT “A”

SCOPE OF SERVICES

I. Project.

This scope of services highlights the basic brownfield consulting services to be provided by the Contractor to assist the city designate “NW 62 Street Passive Park Green Reuse Area,” pursuant to Sec. 376.80, Florida Statutes, Florida’s Brownfield Redevelopment Act for the purpose of environmental rehabilitation, job creation and promoting economic redevelopment. The Contractor will be responsible for preparing all documents including reports and resolution for the brownfield area designation, transmittal of the brownfield area designation by city to FDEP, outreach program with the community, coordinating with the regulatory agencies, coordination meeting with the city’s elected officials, data collection and analysis, review of environmental reports, preparation of the Brownfield Site Rehabilitation Agreement (BSRA), and coordination with city and other agencies staff. The Consultant will also help city staff develop strategy to maximize a cleanup tax credit application to FDEP.

A. Scope of Services

The following tasks constitute the services for this engagement (the “Scope of Work”):

Task 1

- Review (i) all environmental documentation for the Subject Properties provided to the Firm by the Client and the Client’s environmental consultant and (ii) all relevant records for the Subject Properties maintained in online regulatory databases by the Miami-Dade County Department of Regulatory and Economic Resources (“DRER”) and the Florida Department of Environmental Protection (“FDEP”).
- Prepare a request for designation of the Subject Property as a Green Reuse Area pursuant to Florida’s Brownfields Redevelopment Act that meets the statutory requirements of §376.80, Florida Statutes.
- Brief City staff and elected officials on the Green Reuse Area designation request in advance of public hearings. Respond to requests for supplemental information, if any, from City staff and elected officials.
- Assist with drafting of staff report in support of the Green Reuse Area designation request for review and consideration by the City Council.
- Assist with drafting of resolution effectuating Green Reuse Area designation for consideration and use by the City attorney.

- Assist with drafting of Green Reuse Area designation notice of public hearing to be published by City as required by Florida Statutes.
- Assist with drafting of coordination and management of all public notification and outreach requirements associated with Green Reuse Area designation as required by statute.
- Appear at all community meetings and two public hearings in support of the Green Reuse Area designation.
- Ensure City's timely transmittal of approved Green Reuse Area designation resolution to FDEP.

Task 2

- Prepare and negotiate Brownfield Site Rehabilitation Agreement with the Miami-Dade County DRER (which functions by statute as FDEP's delegated agent).
- Convene and manage initial meeting of Brownfield Advisory Committee.

Task 3

- Develop protocol for payment of contractor site rehabilitation invoices to maximize return of Voluntary Cleanup Tax Credits ("VCTCs") to the City.
- Ensure that contractor's invoices properly reflect VCTC eligible work.
- Select and engage CPA firm to audit VCTC Application.
- Obtain all documentation required for VCTC Application from City staff and contractors.
- Prepare and file VCTC Application with FDEP.
- Respond to any requests for additional information from FDEP as a result of initial filing of VCTC Application.

B. Fees

The Firm's fixed fee for the above the Scope of Work is as follows:

\$40,250.00, to be paid incrementally as follows:

- \$20,000.00 upon engagement – 50% upon engagement and 50% upon approval by the City Council Brownfield Designation;
- \$15,000.00 upon execution of Brownfield Site Rehabilitation Agreement by City and Miami Dade County; and
- \$ 5,250.00 upon filing of Voluntary Cleanup Tax Credit Application with FDEP.

If the City Council decides not to adopt the Doral Legacy Park Green Reuse Sports Complex and Wellness Area designation resolution (or its equivalent) for the Subject Property, Miami-Dade County DRER denies the City's eligibility for a BSRA for the Subject Property, or the City Manager or his designee decides for any reason or for no reason to no longer pursue the designation or execution of a BSRA for the Subject Property (each contingency a "Refundability Event"), the Firm will refund all legal fees paid to the Firm to date by the City under this Agreement, and the City will have no further legal obligation to pay fees to the Firm under this Agreement. All fees will be refunded to the City no later than (3) business days after occurrence of a Refundability Event.

Please note that the Firm's services are only those expressly set forth in the above Scope of Work. Any additional work that the City may request of the Firm in connection with the Subject Property, such as preparing any specific economic incentive or grant application; reviewing and providing comments on technical documents after execution of the BSRA; and/or providing general legal counsel in connection with pursuing remediation and/or regulatory closure, can be addressed in an amendment to this engagement letter and will be subject to additional fees.

C. Costs

The City agrees to be responsible for any and all costs incurred by the Firm on its behalf related to any matter associated with the Scope of Work. In addition, any costs associated with hiring a CPA firm to conduct an audit of the City's VCTC application for eligible 2016 site rehabilitation costs are excluded from the fixed fee established herein. Based on prior experience, the Firm estimates that these costs will range from \$2,100.00 to \$3,000.00. By executing this agreement, the City authorizes the Firm to expend up to \$3,000.00 to engage a CPA firm for the aforementioned purposes; provided, however, that any such expenses are first approved by the City. Note that the Firm does not charge for long distance phone service, transmittals via U.S. Mail, facsimiles, and any routine copying performed at the Firm's offices.

D. Other Billings Terms

Any payments that are made after their respective due dates shall accrue interest at one and one-half percent (1.5%) per month. The Firm reserves the right to suspend or terminate its performance under this engagement letter or any other City related matter if any payment remains outstanding for more than 15 calendar days. The prevailing party in any litigation that may arise out of this engagement shall be entitled to attorney's fees. Venue shall be in any competent court of jurisdiction in Miami-Dade County, Florida.

II. Project Schedule.

	<u>Task</u>	<u>Due Date</u>	<u>Deliverable</u>
1	Effectuate designation through public notice, community engagement, presentation of eligibility to City Council, and adoption of resolution	January 28, 2016	Approved resolution designating parcels Doral Legacy Park Green Reuse Sports Complex and Wellness Area
2	Prepare and Negotiate Brownfield Site Rehabilitation Agreement (“BRSA”), including creation and convening of Advisory Committee	February 24, 2016 or earlier	Fully executed BSRA between City of Doral and Miami-Dade County
3.	City Council approval of the BRSA application package. Coordination with the Project Environmental Consultants and City staff to prepare the Voluntary Cleanup Tax Credit (VCTC) application package, and transmittal to the FDEP. Respond to any information request from FDEP.	March 31, 2016 or earlier.	Preparation and transmittal of VCTC application package to FDEP. Monitor FDEP review of the City’s VCTC application.

III. Hourly Rates.

This engagement is for an agreed-upon flat fee of \$40,250.00 and will be paid based on achievement of the two deliverables noted in Section II, Project Schedule. The first payment of \$15,000.00 is due upon engagement. The second payment of \$15,000.00 is due upon achieving the deliverable associated with Task 1. The second payment of \$15,000.00 is due upon execution of Brownfield Site Rehabilitation Agreement (BSRA) by City and Miami Dade County. The third payment of \$15,000 is due upon filing of Voluntary Cleanup Tax Credit (VCTC) Application with FDEP. If the consultant is unable to achieve both deliverables, all fees paid to date under this Professional Services Agreement (PSA) will be refunded by the consultant to the City.

When engaged on a time and materials basis, the consultant’s standard hourly rates for local governments are \$400 for Partners and \$275 for Associates.

EXHIBIT “B”

Insurance Policy