

**RESOLUTION No. 11 – 146**

**A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FL AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH THE FLORIDA ATLANTIC UNIVERSITY JOHN SCOTT DAILEY INSTITUTE FOR THE PROVISION OF RECORDS MANAGEMENT CONSULTING SERVICES IN AN AMOUNT NOT TO EXCEED \$38,400.00; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Doral has approved a Records Management Plan that creates a fully-compliant and accessible records management system in keeping with its vision of transparency in government; and

**WHEREAS**, the approved budget of the Office of the City Clerk for FY 2011-2012 includes monies towards the cost of records management consulting services from Steve Lewis, SML, Inc. through the John Scott Daily Florida Institute of Government at Florida Atlantic University; and

**WHEREAS**, Staff respectfully requests that the City Council authorize the City Manager to negotiate and enter into an agreement with the John Scott Daily Institute at Florida Atlantic University for the provision of records management consulting services from Steve Lewis of SML, Inc. in an amount not to exceed \$38,400.00 for FY 2011-2012 according to the terms of the agreement included herein as Exhibit "A."

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

**Section 1.** The City Council of the City of Doral, Florida hereby authorizes the City Manager to negotiate and enter into an agreement with the John Scott Daily Institute at Florida Atlantic University for the provision of records management consulting services from Steve Lewis of SML, Inc. in an amount not to exceed \$38,400.00 for FY

2011-2012 according to the terms of the agreement included herein as Exhibit "A."

**Section 2.** This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Vice Mayor DiPietro who moved its adoption. The motion was seconded by Councilman Boria and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Michael DiPietro	Yes
Councilman Luigi Boria	Yes
Councilman Pete Cabrera	Yes
Councilwoman Ana Maria Rodriguez	Yes

PASSED and ADOPTED this 9<sup>th</sup> day of November, 2011.

  
\_\_\_\_\_  
JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:

  
\_\_\_\_\_  
BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
JIMMY MORALES, ESQ., CITY ATTORNEY

# EXHIBIT "A"



**City of Doral**  
**Professional Services Agreement**

THIS AGREEMENT is made and entered into on the \_\_\_\_ day of November, 2011 by and between:

City of Doral  
8300 NW 53<sup>rd</sup> Street, Suite 100  
Doral, Florida 33166  
(Hereinafter referred to as "the City")

AND:

John Scott Dailey Florida Institute of Government at FAU  
777 Glades Road  
Building 44, Room SO 277  
Boca Raton, FL 33431  
(Hereinafter referred to as "Consultant")

WITNESSETH:

In consideration of the mutual covenants and conditions as herein expressed and of the faithful performance of all such covenants and conditions, the parties do hereby mutually agree as follows:

**ARTICLE I**

I. **THE CONTRACT DOCUMENTS**

The Contract Documents shall consist of this Agreement, any amendments subsequent to the date hereof, and any written directions provided by the City to the Consultant in connection with the scope of services described below.

**ARTICLE 2**

2. SCOPE OF SERVICES

- 2.1 Consultant will supply all personnel, equipment, and resources necessary to provide records management consultant services in connection with the City's Records Management Plan to be performed for the City which are set forth on Exhibit A hereto. The specific services to be provided shall consist of those records management consultant services that are standard in the industry as well as any similar services reasonably requested by the City.
- 2.2 Consultant shall provide a project team to perform its duties hereunder (as existing from time to time, the "Project Team"), the members of which shall be employees of the Consultant. The Consultant shall designate from time to time an individual to act as representative of Consultant. Consultant may, from time to time upon notice to the City, make changes in and deletions and additions to the Project Team; provided, however, the City shall have the right to approve any new or replacement member of the Project Team. The City shall have the right from time to time to reasonably request that a member or members of the Project Team be removed and replaced by a person or persons acceptable to the City in its reasonable discretion.

**ARTICLE 3**

3. CONTRACT SUM

- 3.1 Upon satisfactory completion of the specified work as determined by the sole discretion of the City Manager, the Consultant agrees to charge the City for time and materials associated with performing the work in accordance with the Contract documents and the negotiated not to exceed the maximum price of \$38,400.00 for FY 2011-2012.
- 3.2 Any change of compensation under this Agreement will require a written change order approved by the City.

**ARTICLE 4**

4. CONTRACT TIME

The term of this Agreement is for a period of one (1) year with the option of the City to renew for two additional one year periods.

## **ARTICLE 5**

### **5. INVOICING AND PAYMENT**

- 5.1 The Consultant will issue an invoice once a month for the work, which has been completed, in the City Manager's sole discretion. If he/she determines that the work specified in the invoice has been performed according to the job specifications, the City shall pay such invoice within 30 days.
- 5.2 The Consultant's invoice shall show a complete breakdown of the project components, the quantities completed and the amount due, and any other supporting documentation as may be required by the Contract documents for approval.

## **ARTICLE 6**

### **6. INSURANCE**

To the extent provided under Section 768.28 of the Florida Statutes, Consultant assumes any and all risks of personal injury and property damage, deprivation, or infringement (including, but not limited to, intellectual property) attributable to the negligent acts or omissions of the Consultant and its officers, employees, servants, and agents while acting within the scope of their employment by Consultant. The City assumes any and all risks of personal injury and property damage, deprivation or infringement (including, but not limited to, intellectual property) attributable to the negligent acts or omissions of the City and its officers, employees, servants, and agents while acting within the scope of their employment by the City. Consultant, as a state agency, warrants and represents that it is self-funded for liability insurance, both public and property, with said protection being applicable to its officers, employees, servants, and agents while acting within the scope of their employment by Consultant. Nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its officers, employees, servants, agents, agencies, or public bodies corporate to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in section 768.28 of Florida Statutes.

## **ARTICLE 7**

### **7. ASSIGNMENT**

This Agreement shall not be assignable by the Consultant.

## **ARTICLE 8**

### **8. PROHIBITION AGAINST CONTINGENT FEES**

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 unless approved by the City Manager of the City of Doral.

## **ARTICLE 9**

### **9. TERMINATION**

This Agreement may be terminated by the City upon ten days' written notice with or without cause and by the Consultant upon 30 days' written notice with or without cause. If this Agreement is terminated, the Consultant shall be paid in accordance with the provisions of Articles 4 and 5 of this Agreement for all acceptable work performed up to the date of termination.

## **ARTICLE 10**

### **10. NONEXCLUSIVE AGREEMENT**

The services to be provided by the Consultant pursuant to this Agreement shall be nonexclusive and nothing herein shall preclude the City from engaging other firms to perform the same or similar services for the benefit of the City within the City's sole and absolute discretion.

## **ARTICLE 11**

### **11. ENTIRE AGREEMENT**

This Agreement, together with all pertinent documentation shall constitute the entire agreement which may only be amended or modified upon written agreement between the parties.

## **ARTICLE 12**

### **12. ATTORNEY'S FEES**

In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs. This provision shall exclude all litigation resolved by agreement of the parties.

### **ARTICLE 13**

#### **13. NONDISCRIMINATION**

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, national origin, and agrees to abide by all Federal and State laws regarding nondiscrimination.

### **ARTICLE 14**

#### **14. OWNERSHIP AND ACCESS TO RECORDS AND AUDITS**

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. The City Manager or his designee shall, during the term of this Agreement, have access in connection with any litigation arising out of this Agreement; the prevailing party shall be entitled to recover reasonable attorney's fees and costs. This provision shall exclude all litigation resolved by agreement of the parties.

### **ARTICLE 15**

#### **15. INDEPENDENT CONTRACTOR**

The Consultant and its employees, volunteers and agents shall be and remain independent contractor 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.

### **ARTICLE 16**

#### **16. COMPLIANCE WITH LAWS**

The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to services provided hereunder.



**ARTICLE 17**

**17. NOTICES**

All notices and communications to the City shall be in writing and shall be deemed to have been properly given if transmitted by registered or certified mail or hand delivery. All notices and communications shall be effective upon receipt. Notices shall be addressed as follows:

City: Yvonne Soler-McKinley  
City Manager  
City of Doral  
8300 NW 53 Street, Suite 100  
Doral, Florida 33185

With a copy to: Jimmy Morales, Esq.  
City Attorney  
City of Doral  
8300 NW 53 Street, Suite 101  
Doral, Florida 33185

Barbara Herrera  
City Clerk  
City of Doral  
8300 NW 53 Street, Suite 100  
Doral, Florida 33185

Consultant: John Scott Dailey Florida Institute of  
Government at FAU  
777 Glades Road  
Building 44, Room SO 277  
Boca Raton, FL 33431

**ARTICLE 18**

**18. GOVERNING LAW**

This Agreement shall be construed in accordance with the laws of the State of Florida.

**ARTICLE 19**

**19. DISCLAIMER OF WARRANTIES & CONSEQUENTIAL DAMAGES**

The Consultant makes no warranties of any kind, express or implied, pertaining to the services, and to the maximum extent permitted by law, disclaims all warranties and conditions, either express or implied, pertaining to the services.

To the maximum extent permitted by law, in no event shall either party be liable for any special incidental, indirect, or consequential damages whatsoever, pertaining to the services (including, without limitation, damages for loss of business profits, business interruption, or any other pecuniary loss, including legal fees), whether for a breach of contract, failure of essential purpose, negligence or otherwise, even if the party has been advised of the possibility of such damages.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms and conditions above stated on the day and year first above written.

Consultant:

City:

John Scott Dailey Florida Institute  
of Government at FAU  
777 Glades Road  
Building 44, Room SO 277  
Boca Raton, FL 33431

City of Doral  
8300 NW 53<sup>rd</sup> Street, Suite 100  
Doral, FL 33166

By:

By:

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Yvonne Soler-McKinley  
City Manager

Attest:

\_\_\_\_\_  
Barbara Herrera  
City Clerk

Approved for legal sufficiency:

\_\_\_\_\_  
Jimmy Morales, Esq.  
City Attorney

# Exhibit A

## Scope of Services

Scope of services includes but is not limited to the following:

- Assistance monitoring changing legislation, Attorney General and Court Opinions,
- Assistance monitoring changing Florida Administrative Code and Retention Schedules,
- Assistance designing filing systems,
- Assistance with the records management of the City of Doral Police Department
- Professional training for staff record coordinators; available on a monthly basis,
- Assistance compiling Florida Department of State Compliance Statements,
- Assistance compiling Disposition Lists. As a young City, the list of Record Series titles grows with each passing retention unit as retention requirements are met,
- Assistance with the integration of technology and changing standards in the Florida Administrative Codes; specifically Rule Chapter 1B-26,
- Assistance selecting service providers and monitoring for compliance,
- Assistance designing and implementing file arrangements to ensure disposition efficiency and data retrieval, and
- Assistance drafting record Policy and Procedure as issues arise.

**(Exhibit A – Continued)**

**CONFIRMATION OF TECHNICAL ASSISTANCE**

**TO:** The John Scott Dailey Florida Institute of Government at  
Florida Atlantic University

**FROM:** City of Doral

**DATE:** November 9, 2011

We hereby confirm that we have requested the following technical assistance project through the Florida Institute of government at Florida Atlantic University:

**DATES OF PROJECT:**

To be determined by the City of Doral and Steve M. Lewis, President, SML, Inc and his associates.

**TECHNICAL ASSISTANCE PROJECT:**

Assisting the City of Doral with records management.

**FEE TO THE INSTITUTE OF GOVERNMENT:**

Estimated 24 days at a daily rate of \$1600 per day

**TIME FRAME:**

October 1, 2011 – September 30, 2012

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Upon completion of the records management technical assistance and upon receipt of an invoice from FAU, we agree to compensate FAU for the cost of the technical assistance project. We agree that in the event the service cannot be provided, FAU will not be held liable and no compensation will be due from FAU to this agency. Further, no compensation will be due from the agency to FAU if the service cannot be provided.

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Authorized Agency Signature

Date

Please fax or email to: Sarah Shannon, Director  
The John Scott Dailey Florida Institute of Government at FAU  
777 Glades Road, Building 44, Room SO 277  
Boca Raton, Fl 33431  
561) 297-3749/ (561) 297-4479 (fax)  
sshannon@fau.edu