

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF DORAL
AND
PROS CONSULTING
FOR
DORAL CENTRAL PARK BUSINESS PLAN**

THIS AGREEMENT is made between **PROS CONSULTING** (hereinafter the "Consultant"), and the **CITY OF DORAL, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the Consultant was a subcontractor for Browning Day, the consultant hired by the City to prepare the Doral Central Park ("DCP") Master Plan, and is intimately familiar with the elements and programming of DCP; and

WHEREAS, the City previously retained the services of the Consultant for the Phase I portion of the business plan for DCP; and

WHEREAS, the City desires to retain the services of the Consultant again for Phase II of the business plan for DCP; and

WHEREAS, the Consultant and City, through mutual negotiation, have agreed upon a scope of services, and fee for the development of a business plan for DCP (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 found in Exhibit "A", which is attached to this Agreement and incorporated herein and made a part hereof 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 until deliverables stated in Exhibit A have been completed by the Consultant or unless earlier terminated in accordance

with Paragraph 8. The City Manager may extend the term of this Agreement up to an additional 180 days 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 On a time and material/expense basis to complete the Scope of Services, provided, however, that total payments to Consultant shall not exceed \$ 12,500.00 , without the prior written approval of the City. Consultant shall submit its bills in arrears upon the completion of each task or deliverable in accordance with the Project Schedule or on a monthly basis in a form approved by the City. The bills shall show or include: (i) the task(s) performed; (ii) the time devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed.

3.2 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.

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 sub-consultants and shall maintain responsibility for all work related to the Project.

4.2 Any sub-consultants 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 architect 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. The City in no way assumes or shares any responsibility or liability of the Consultant or Sub Consultant under this agreement.

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 may terminate this Agreement, for any reason, upon thirty (30) days written notice to the Consultant, or immediately with cause. Cause for purposes of this Agreement shall be defined as a violation of Federal, State, County, and/or City regulations by Consultant in performance of its obligations under this Agreement, in the City Manager's sole determination, and/or a failure of Consultant to follow the directives of the City in such a manner as to cause unreasonable delay, prejudice, and/or damage to the City, in the City Manager's sole determination.
- 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.**

9.1 The Consultant shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by Exhibit B. The insurance carrier shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida.

9.2 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, or in accordance to policy provisions. The City further reserves the right to solicit additional coverage, or require higher limits of liability as needed, and depending on the nature of scope, or level of exposure.

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. This section shall be interpreted and construed in a manner to comply with any applicable Florida Statutes, including without limitation Sections 725.06 and 725.08, Fla. Stat., if applicable.

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

12.3 Ten dollars (\$10) of the payments made by the City constitute separate, distinct, and independent consideration for the granting of this indemnification, the receipt and sufficiency of which is voluntary and knowingly acknowledged by the Consultant.

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.
 City Attorney
 Weiss, Serota, Helfman
 Cole, & Bierman, PL

2525 Ponce De Leon Boulevard, 7th Floor
Coral Gables, FL 33134

For The Consultant: _____

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.

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.

16.3 In addition to other contract requirements provided by law, Consultant shall comply with public records laws, specifically to: (a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service; (b) Provide the public with

access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (c) 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 (d) Meet all requirements for retaining public records and transfer, at no cost, to the City 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 City in a format that is compatible with the information technology systems of the City.

16.4 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.

[SPACE INTENTIONALLY LEFT BLANK. SIGNATURES TO FOLLOW.]

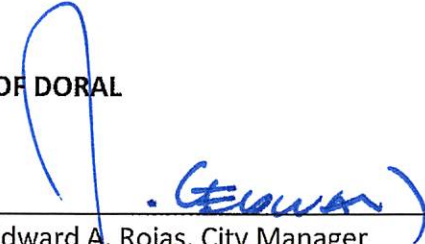
IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same and by Consultant by and through its _____, whose representative has been duly authorized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

Attest:



Connie Diaz, City Clerk

CITY OF DORAL

By: 

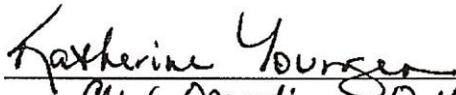
Edward A. Rojas, City Manager
Date: 9.14.18

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



Weiss, Serota, Helfman, Cole, & Bierman, PL
City Attorney

CONSULTANT

By: 

Its: Chief Operating Officer
Date: 7-17-2018

Exhibit A

PROS Consulting Proposal

Exhibit B

Insurance Requirements



Scope of Services

TASK 1: OPERATIONAL and COST ESTIMATES

Operational Plan and Cost Estimate – PROS will utilize information gathered to recommend maintenance and operational standards, resource requirements, programming strategies, and funding options for the preferred program. If not already completed, this will include:

- Facilitating a discussion with the key management regarding the financial and operational assumptions required to gauge the dynamic variables for ongoing operational strategies. These base assumptions will be expanded to provide the framework for continued analysis and strategy development.
- Establishing operational standards and costs for both sites based on set or already-existing maintenance standards for full operation. This will include hours of operation, maintenance standards, staffing levels needed, technology requirements and customer service requirements based on established and agreed upon outcomes. After consultation with the staff, operational costs for the site will be finalized.
- Based on the operational plan for the site, and park related amenities, PROS will develop a five year pro forma and operating budget including two iterations of review by the Client for accuracy. Funding options will be identified and evaluated against their potential support and success. These options will include a combination of partnerships and sponsorships, ancillary revenue generation opportunities, and other available resources.

Fees: \$10,000

TASK 2: FINALIZING THE PLAN

Report Development – PROS will develop electronic documents as either standalone deliverables or provide report content to Doral for inclusion into other master planning deliverables.

Presentations – PROS will make one (1) in-person presentation, which may include a report of findings or final presentations to a steering committee, the public, park board, or City Council.

Fees: \$2500

Phase 2 Total - \$12,500

Trips: 1 trip (reimbursable at actuals)

Exhibit "B"

Insurance Requirements Professional Services Contract

Please Note: The Certificate shall contain a provision that coverage afforded under the policy will not be cancelled until at least thirty (30) days prior written notice has been given to the City, or in accordance to policy provisions. Certificates of insurance, reflecting evidence of the required insurance, shall be provided to the City. In the event the Certificate of Insurance provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the vendor shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed Certificate of Insurance as proof that equal and like coverage for the balance of the period of the Agreement or extension hereunder is in effect.

The City reserves the right to require additional insurance in order to meet the full value of the scope of services.

At award time, the successful bidder must furnish a Certificate of Insurance and Declaration of Coverage Page showing the City of Doral as additional named insured on each of the policies referenced below.

I. Commercial General Liability

A. Limits of Liability

Bodily Injury & Property Damage Liability	
Each Occurrence	\$1,000,000
Policy Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Products/Completed Operations	\$1,000,000

B. Endorsements Required

City of Doral listed as an additional insured
Primary Insurance Clause Endorsement
Contingent and Contractual Liability
Premises and Operations Liability

II. Automobile Liability (If Applicable) \$1,000,000

Owned or Scheduled Autos, including Hired and Non Owned Autos
City of Doral listed as an additional insured

- III. **Umbrella/Excess Liability (Excess Follow Form)**
 - Each Occurrence \$2,000,000
 - Policy Aggregate \$2,000,000

City of Doral listed as an additional insured
 Excess over all applicable liability policies

- IV. **Workers Compensation**
 Statutory Limits- State of Florida

Employer's Liability
 Limits of Liability
 \$1,000,000 for bodily injury caused by an accident, each accident
 \$1,000,000 for bodily injury caused by disease, each employee
 \$1,000,000 for bodily injury caused by disease, policy limit

- V. **Professional Liability/Error's & Omissions**

A. Limits of Liability (E&O)
 Each Claim \$3,000,000
 Policy Aggregate \$3,000,000
 If claims-made: Retro Date will be effective prior to project inception. Coverage shall continue to apply three years after the contract work is completed.

The above policies shall provide the City of Doral with written notice of cancellation or material change from the insurer in accordance to policy provisions.

Companies authorized to do business in the State of Florida with the following qualifications shall issue all insurance policies required above:

The Company must be rated no less than "A-" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best Insurance Guide published by A.M. best Company, or its equivalent. All policies or certificates of insurance are subject to review and verification by Risk Management