

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF DORAL
AND
BECKER & POLIAKOFF, P.A.
FOR
GOVERNMENTAL RELATIONS SERVICES**

THIS AGREEMENT is made between **BECKER & POLIAKOFF, P.A.** a Florida, for-profit professional corporation (hereinafter the “Consultant”), and the **CITY OF DORAL, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

RECITALS

WHEREAS, Consultants are engaged in the profession of local, state, and federal governmental relations and municipal advisory services; and

WHEREAS, the City and Consultant entered into an initial agreement for Consultant to pursue certain projects, programs, and/or legislative objectives involving Miami-Dade County, which has expired; and

WHEREAS, the City desires to further retain Consultant, and Consultant desires to continue to work with the City, to accomplish the City’s public policy objectives, pursuant to the terms specified herein.

AGREEMENT

NOW, THEREFORE, in consideration of the aforementioned recitals, which are incorporated herein and made a part hereof by this reference, the mutual covenants and conditions contained herein, and other good and valuable consideration, the sufficiency of which is acknowledged by the Parties, Consultant and the City agree as follows.

1. Scope of Services/Deliverables.

- 1.1 The Consultant shall furnish strategic public policy, government affairs, other advisory services associated with the City’s annexation efforts (the “Services”). The Services shall include, without limitation: meetings with Miami-Dade County Staff; presentations to the City of Doral Council; communication with County Commission members to achieve desired annexation; review Annexation report for sufficiency; outreach to commercial residential property owners in the annexation area; presentation before the Miami-Dade County Board of County Commissioners; liaising with City Staff; and such other tasks reasonably related to the City’s annexation application.

1.2 The Parties understand that the procedure for the approval for annexation application is dictated by Miami-Dade County and may be impacted by the applications of neighboring municipalities. Consultant and City shall coordinate to set reasonable and mutually acceptable time frames for action items that are part of the Services, taken into consideration County established procedures.

2. **Term/Commencement Date.**

2.1 This Agreement shall become effective on ~~March~~ ^{April} 1, 2017 and shall remain in effect for six (6) months, unless earlier terminated in accordance with Paragraph 8. DAE

2.2 Consultant agrees that time is of the essence and Consultant shall complete each deliverable for the Project within the timeframes set forth by the City.

3. **Compensation and Payment.**

3.1 In consideration for the Services, Consultant shall be paid a fixed, flat fee of THREE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$3,500.00) per month, payable within 20 days of an invoice being forwarded by Consultant. Related costs incurred by Consultant that have been approved by the City Manager shall be reimbursed to Consultant upon inclusion of such costs in a monthly invoice, supported by documentation and forwarded along with invoices.

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. **Sub-Consultants.**

4.1 The Consultant shall be responsible for all payments to any of its subcontractors and shall maintain responsibility for all work related to the Project. For special projects, Consultant may recommend subs to and for the City's own needs.

4.2 Any subcontractors used on City priorities 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 information including but not limited to, 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 Services as is ordinarily provided by professional government relations consultants under similar circumstances. 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.) involved in matters which are in direct conflict with Consultant's scope of services, 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. Cause shall be defined as a finding by the City, determined in the City's sole discretion, that Consultant has violated Federal, State, County or City laws, has failed to perform a material provisions of this Agreement which has not been cured within fifteen days of receiving notice from the City, and/or committed an act which might tend to bring Consultant into public disrepute, contempt, scandal, or ridicule, or which might tend to reflect unfavorably on the City.
- 8.2 Upon receipt of the City's written notice of termination, Consultant shall stop work on the Services.
- 8.3 In the event of termination by the City, Consultant shall be paid for the current contract term, provided 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.

8.5 If the Consultant wishes to terminate this Agreement prior to the end of the initial term or during the option years, it must provide the City with one-hundred and twenty (120) days written notice. Failure to provide the City with one-hundred and twenty (120) days written notice may result in the Consultant being unable to do business with the City until the full contract term expires.

9. **Insurance.**

9.1 Consultant shall secure and maintain throughout the Term, appropriate levels of commercial insurance, as determined by the City.

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 indemnify and hold harmless the City, its officers and employees, from and against any and all demands, claims, losses, suits, liabilities, judgment or damages, arising out of, related to, or any way connected with Consultant's intentional negligent performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from Agreements between the Consultant and third parties made pursuant to this Agreement, as determined by judgment

and/or good faith settlement. 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 negligent 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. **Remedies.**

13.1 Neither the City nor the Consultant shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected to this Agreement or the performance of the services on this Project. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, unrealized energy savings, diminution of property value or loss of reimbursement or credits from governmental or other agencies.

14. **Notices/Authorized Representatives.**

14.1 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 Rojas
City Manager, City of Doral
8401 NW 53rd Terrace
Doral, Florida 33166

With a Copy to: Daniel A Espino, Esq.
Weiss Serota Helfman Cole & Bierman, P.L.
City Attorney
2525 Ponce De Leon Boulevard, 7th Floor
Coral Gables, FL 33134

For The Consultant: Jose K. Fuentes
Becker & Poliakoff, PA

121 Alhambra Plaza, 10th Floor
Coral Gables, FL 33134

15. **Governing Law.**

15.1 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.

16. **Entire Agreement/Modification/Amendment.**

16.1 This writing and any addenda hereto comprises the entire Agreement of the parties. This agreement further 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.

16.2 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.

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

17.1 Upon full payment of all monies owed to the Consultant, 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 agrees, to the fullest extent permitted by law, to indemnify and hold Consultant harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any reuse or modification of the Records by the City or any person or entity that obtains the Records from or through the City.

17.2 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.

17.3 Consultant shall comply with public records laws, specifically, without limitation, to:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service;

- (b) 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;
- (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;
- (d) 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.

17.3 The City may cancel this Agreement if Consultant refuses or fails to comply with this section, 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, and/or to comply with a public records request, the public agency shall enforce the contract provisions in accordance with the contract.

18. **Nonassignability.**

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

19. **Severability.**

19.1 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.

20. **Independent Contractor.**

20.1 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.

21. **Representations and Warranties of Consultant.**

21.1 Consultant hereby warrants and represents, at all times during the Term of this Agreement, inclusive of any renewals thereof, that:

21.1.1 Consultant, and its employees and/or subcontractors, shall maintain in good standing all required licenses, certifications and permits required under federal, state and local laws necessary to perform the Services hereunder;

21.1.2 Consultant is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Florida validly doing business and in good standing under the laws of the State of Florida;

21.1.3 The execution, delivery and performance of this Agreement by Consultant has been duly authorized and no consent of any other person or entity to such execution, delivery and performance is required to render this Agreement a valid and binding instrument enforceable and in accordance with its terms; and

21.1.4 Consultant has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional and first class manner.

22. **Compliance with Laws.**

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

23. **Non-collusion.**

23.1 Consultant certifies that it has not divulged, discussed or compared his/her/its quote with other individuals and/or entities that provided quotes to the City for the Services and has not colluded with any other individual or entity whatsoever.

24. **Truth in Negotiating Certificate.**

24.1 Consultant hereby certifies, covenants, and warrants that wage rates and other factual unit costs supporting the compensation for the Services that may be offered pursuant to this Agreement are accurate, complete, and current. Consultant further agrees that the Fee provided shall be adjusted to exclude any significant sums by which the City determines the

agreement price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such agreement adjustments shall be made within one (1) year following the end of the Term or any Extension term.

25. **Waiver**

25.1 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.

26. **Survival of Provisions**

26.1 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.

27. **Prohibition of Contingency Fees.**

27.1 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.

28. **Force Majeure.**

28.1 It is understood that performance of any act by the City or Consultant hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts or any cause beyond the reasonable control of such party, provided however, the City shall have the right to provide substitute service from third parties or City forces as may be necessary to meet City needs, and, in such event, the City shall withhold payment due Contractor for such period of time, if any. If the condition of force majeure exceeds a period of fourteen (14) days, the City may, at its option and discretion, cancel or renegotiate the Agreement.

29. **Counterparts**

30.1 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:

Attest:

CITY OF DORAL

for Kalaysia, Kannie Lopez
Connie Diaz, City Clerk

By: [Signature]
Edward Rojas, City Manager
Date: 3.31.17

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

[Signature]
Weiss Serota Helfman Cole & Bierman, PL
City Attorney

BECKER & POLIAKOFF, P.A.

By: [Signature]
Its: _____
Date: 3/31/17