

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF DORAL
AND
ANALYTICA
FOR
STRATEGIC PLANNING SERVICES**

THIS AGREEMENT is made between **ANALYTICA** (hereinafter the “Provider”), and the **CITY OF DORAL, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”). Provided and City may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, in response to RFQ#2015-03, titled “Strategic Planner” (the “RFQ”), the City of Doral (the “City”) received three (3) responses by the March 19, 2015 deadline; and

WHEREAS, after evaluation, Analytica was recommended as the top ranked firm; and

WHEREAS, the City Council authorized the City Manager to negotiate and enter into an agreement with Analytica for the provision of strategic planning services pursuant to the terms of the RFQ; and

WHEREAS, the City wishes to enter into an agreement for services for the 2018 Strategic Planning Session to be held in March 2nd and 3rd 2018; and

WHEREAS, the City and Provider, through mutual negotiation, have agreed on the terms and conditions in this Agreement for the provision of services.

AGREEMENT

NOW, THEREFORE, in consideration of the 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, Provider and the City agree as follows.

1. Scope of Services/Deliverables.

1.1 The Provider shall furnish the professional services to the City as set forth 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 initial Agreement shall become effective upon execution by both parties and shall remain in effect for one (1) year from the date of execution of Agreement, unless earlier terminated in accordance with Paragraph 8. The Provider shall maintain, for the entirety of the stated additional period(s), the same terms and condition included within this original Agreement. Continuation of the Agreement beyond the initial term, and the optional years, is a City prerogative, and not a right of the Provider.
- 2.2 Provider agrees that time is of the essence and Provider 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 Provider shall be compensated in the following manner:

An amount of TWELVE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$12,500.00) regardless of the number of hours or length of time necessary for Provider to complete the Scope of Services (the "Fee"). Provider shall not be entitled to any additional payment for any expenses incurred in completion of the Scope of Services. Provider 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 Provider in accordance with the Florida Prompt Payment Act. The City shall remit 50% of the Fee to Provider upon execution of the Agreement. Upon the issuance of the report required by the Scope of Services, the City shall remit the remaining 50% of the Fee to Provider.
- 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 Provider the undisputed portion of the invoice. Upon written request of the Finance Director, the Provider 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-Providers.**

- 4.1 The Provider shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Project.
- 4.2 Any subcontractors 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 Provider, at the Provider's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Provider, in possession of the City.
- 5.2 Arrange for access to and make all provisions for Provider to enter upon real property as required for Provider to perform services as may be requested in writing by the Provider (if applicable).

6. **Provider's Responsibilities.**

- 6.1 The Provider shall exercise the same degree of care, skill and diligence in the performance of the Project as is ordinarily provided by a professional fireworks display provider 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 Provider'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 Provider shall at Providers sole expense, immediately correct the work. The City in no way assumes or shares any responsibility or liability of the Provider or Sub Provider under this agreement.

7. **Conflict of Interest.**

- 7.1 To avoid any conflict of interest or any appearance thereof, Provider 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 Provider, or immediately with cause.
- 8.2 Upon receipt of the City's written notice of termination, Provider shall stop work on the Project.
- 8.3 In the event of termination by the City, the Provider shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Provider has first complied with the provisions of Paragraph 8.4.
- 8.4 The Provider 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 Provider wishes to terminate this Agreement prior to the end of the initial term or during the option years, they 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 Provider being unable to do business with the City in the future.

9. **Insurance.**

9.1 The Provider shall secure and maintain throughout the duration of this Agreement medical and/or commercial insurance of such type and in such amounts as required for Provider to operate its business.

9.2 The City may require proof of the aforementioned insurance prior to the commencement of the Services. 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, Provider 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 Provider 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 Provider's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from Agreements between the Provider and third parties made pursuant to this Agreement. Provider 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 Provider'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 Provider.

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 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
Pastoriza Cole & Boniske, P.L.
2525 Ponce De Leon Boulevard, 7th Floor
Coral Gables, FL 33134

For The Provider: Herbert A. Marlow, Jr.
Principal
Analytica
P.O. Box 998 32559
Newberry, FL 32559

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 Provider 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 Provider involving transactions related to this Agreement.

16.3 The City may cancel this Agreement for refusal by the Provider 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 Provider unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Provider, 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 Provider 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.

20. **Compliance with Laws.**

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

21. **Non-collusion.**

21.1 Provider 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.

22. **Truth in Negotiating Certificate.**

22.1 Provider 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. Provider 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.

23. **Waiver**

23.1 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.

24. **Survival of Provisions**

24.1 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.

25. **Prohibition of Contingency Fees.**

25.1 The Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Provider, 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 Provider, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

26. **Force Majeure.**

26.1 It is understood that performance of any act by the City or Provider 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 Town may, at its option and discretion, cancel or renegotiate the Agreement

27. **Counterparts**

27.1 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.

[THIS SPACE INTENTIONALLY LEFT BLANK. SIGNATURES TO FOLLOW.]

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature:

Attest:



Connie Diaz, City Clerk

CITY OF DORAL

By: 

Edward Rojas, City Manager

Date: March 6th, 2018

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

ANALYTICA

By: 

Herbert A. Marlowe, Jr., Principal

Date: 3/13/18

Exhibit “A”
Proposal and Scope of Services

Analytica shall supply all personnel, equipment, and resources necessary to provide strategic planning services, as requested by the administration of the City of Doral, including, without limitation, a two (2) day strategic planning seminar with the City Council, City Manager, and City Staff, with accompanying report within ten (10) days of the conclusion of the seminar. Such work shall include no less than the following services:

1. Preparatory meetings with individual City Council members and City Manager.
2. City Council workshop that includes:
 - a. Facilitate a discussion of the City’s assets and priorities;
 - b. Development of the City Council’s strategic goals for one (1) year and beyond.
3. Final report including: a. Summary of workshop; b. Identification of the Council’s strategic goals for one (1) year and beyond.

The foregoing tasks may include, without limitation, the following:

1. Community meetings to solicit public input;
2. Staff workshop to develop recommended objectives:
 - a. Preparatory meetings with individual City Department Directors;
 - b. Prioritize and rank existing City services and programs based on their ability to achieve established goals;
 - c. Identify new strategies to meet identified goals with an implementation timeline that is within the City’s capacity; and
 - d. Include staff workshop findings in the final report.

RESOLUTION No. 15-70

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING THE RANKINGS OF RESPONDENTS FOR THE PROVISION OF STRATEGIC PLANNING SERVICES; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH ANALYTICA AS THE HIGHEST RANKED RESPONDENT IN AN AMOUNT NOT TO EXCEED \$25,000.00, SUBJECT TO APPROVAL AS TO FORM AND LEGAL SUFFICIENCY BY THE CITY ATTORNEY; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH THE NEXT HIGHEST RANKED FIRM SUCCESSIVELY IF AN AGREEMENT CANNOT BE NEGOTIATED; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Doral (the "City") issued Request for Qualifications #2015-03 for Strategic Planning Services (the "RFQ") on February 20, 2015 for the purposes of obtaining assistance in developing the annual Capital Improvement Plan and budget; and

WHEREAS, in response to the RFQ, the City received three submittals, which were opened on March 9, 2015, of which "Analytica" was ranked the most qualified respondent by the review committee; and

WHEREAS, the Evaluation Committee ranked and scored the respondents based on a 100 Point System; and

WHEREAS, Staff has recommended that the City Council accept the ranking of the firms and authorize the City Manager to negotiate and enter into an agreement with Analytica to provide Strategic Planning Services, or if the negotiations fail with the top ranked firm, to negotiate a professional services agreement with the next highest ranked firms successively until an agreement is reached, either of which will be brought back to Council for review and approval.

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

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

Section 2. Approval of Rankings. The City Council hereby approves the rankings of the three (3) firms as provided by the selection Committee and recommended by the City Manager as follows:

- (1) Analytica;
- (2) CMA Enterprises; and
- (3) BTS Consulting.

Section 3. Authorization to Procure Services. The City Manager is hereby authorized to negotiate and enter into an agreement with the top ranked firm in an amount not to exceed \$25,000.00, subject to approval by the City Attorney as to form and legal sufficiency . If negotiations are unsuccessful with the top ranked firm, the City Manager is authorized to proceed with negotiating and entering an agreement with the next ranked firm or firms in the order of ranking under the same conditions as with the top ranked firm.

Section 4. Implementation. The City Manager and the City Attorney are hereby authorized to take such action as may be necessary to implement the provisions of this Resolution.

Section 5. Effective Date. This resolution shall take effect immediately upon adoption.

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


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

PASSED AND ADOPTED this 7 day of April, 2015.



LUIGI BORIA, MAYOR

ATTEST:



CONNIE DIAZ, CITY CLERK

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



WEISS, SEROTA, HELEMAN, COLE, & BIERMANN, PL
CITY ATTORNEY