

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF DORAL
AND
C.A.P. GOVERNMENT, INC.
FOR
BUILDING INSPECTION & PLANS REVIEW SERVICES**

THIS AGREEMENT is made between **C.A.P. GOVERNMENT, INC.**, an active, for-profit Florida corporation, validly engaging business in the state of Florida (hereinafter the "Provider"), and the **CITY OF DORAL, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

RECITALS

WHEREAS, the City of Doral (the "City") issued a RFQ #2018-04 for: Building Inspection & Plans Review Services" (the "RFQ"), and the City of Doral received three (3) submittals by the corresponding deadline, with two (2) companies meeting the required criteria; and

WHEREAS, the Evaluation Committee ranked and scored the respondents based on a Three-Hundred (300) point System and staff ranked Provider as the top ranked respondent, recommending the City Council approve an agreement with the Provider; and

WHEREAS, the City Council approved Resolution #18-72 authorizing the City Manager to negotiate and enter into an agreement with the Provider, the top ranked firm, for the provision of Building Inspection & Plans Review Services, pursuant of the RFQ and Provider's Proposal and as may be negotiated; 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 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, Provider and the City agree as follows.

1. Scope of Services/Deliverables.

- 1.1 The Provider shall furnish professional inspectors and plans examiners to provide on-call mechanical, roofing, flood, electrical, plumbing, building and structural inspections and plan review as may be required from time to time by the City's Building Department, as well as such technical plan review as may be required from time to time by the City's Planning and

Zoning Department (the "Services"). Provider and City acknowledge that each request for the rendition of the Services will be on an as-needed matter-specific basis which includes discernable timelines in the performance generally as to the Services and specifically as to each timeline and deadline associated with the requested Service tasks.

2. Term/Commencement Date.

2.1 The effective date of this "Agreement shall be August 11, 2018 ("Effective Date") The initial term of the Agreement shall be three (3) years from the Effective Date ("Initial Term"), unless earlier terminated in accordance with Paragraph 8. The City shall have two (2) one-year options to renew this Agreement ("Additional Term(s)"). The Provider shall maintain, for the entirety of the Additional Term(s)", the same terms and conditions included within this original Agreement. Continuation of the Agreement beyond the initial term, and the optional years, is the 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:

On a time and material/expense basis at an hourly rate of SEVENTY-SEVEN DOLLARS and Fifty cents (\$77.50) for inspection services and an hourly rate of EIGHTY-SEVEN DOLLARS and Fifty cents (\$87.50) for building, floodplain, mechanical, electrical, zoning and plumbing plans review services and an hourly rate of ONE HUNDRED AND TWENTY-FIVE DOLLARS (\$125.00) for structural plans review services. Provider shall submit invoices in arrears on a monthly basis in a form approved by the City. The invoice shall be itemized and include: the task(s) performed; by the time spent on each task; the person(s) who performed the task; the hourly rate(s) associated with each task; and copies of receipts for the reimbursable materials/expenses, if any. Expenses not expressly authorized by the City Manager and/or his designee shall not be reimbursed.

3.2 The City shall pay Provider 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

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-consultants.**

4.1 The Provider 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 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 building inspection and plans review services as is ordinarily provided by such professionals under similar circumstances. If at any time during the term of this Agreement or within one (1) year from the completion of the Services, 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. Cause shall be defined as a failure on the part of the Provider to follow a reasonable directive by the City and/or cure a material breach of this Agreement within fifteen (15) days of receiving notice from the City of such breach, as well as an accusation, charge, and/or claim levied against Provider and/or its agents or employees for violation of the local, state, and/or federal law, or malfeasance, associated with the rendition of Services.
- 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 insurance of such type and in such amounts as required by Exhibit A. 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, 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 Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts 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 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. Remedies

13.1 The total amount of all claims the City may have against the Provider under this Agreement or arising from the performance or non-performance of the services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, shall be strictly limited to the lesser of the fees paid, and cost incurred, by the City related to this Agreement or \$500,000.00. As the City's sole and exclusive remedy under this Agreement, any claim, demand or suit shall be directed and/or asserted only against the Provider and not against any of the Provider's employees, officers or directors.

13.2 Neither the City nor the Provider 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 included, 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 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
Pastoriza Cole & Boniske, P.L.
2525 Ponce De Leon Boulevard, 7th Floor
Coral Gables, FL 33134

For The Provider: Carlos A. Penin, P. E.
C. A. P. Government, Inc.
343 Almeria Avenue
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.

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

16.1 This writing and any addenda hereto, along with the RFQ and Provider's proposal comprise the entire Agreement of the parties. The "Agreement Documents" listed below, which are listed in their order of precedence for the purpose of resolving conflicts, errors and discrepancies, with the most recent addenda or agreement superseding any other documentation by this reference shall become part of the Agreement as though physically attached as a part thereof:

Addenda
Agreement
Exhibits to the Agreement
RFQ Documents (Addendum, Invitation to RFQ, Instructions to Proposers. Proposal Form provided by Contractor, Notice of Award and Notice to Proceed):

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 Provider, 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. The City agrees, to the fullest extent permitted by law, to indemnify and hold Provider harmless from any claim, liability or cost including reasonable attorney's

fees and defense costs) arising or allegedly arising out of 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 Provider involving transactions related to this Agreement.

17.3 Provider 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 the public records that are exempt or confidential and except 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.

18. **Non-assignability.**

18.1 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.

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 Provider 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.

21. Representatives and Warranties of Provider

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

21.1.1 Provider, 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 Provider is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and duly registered, 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 Provider 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 against Provider in accordance with its terms; and

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

23. **Non-collusion.**

23.1 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.

24. **Truth in Negotiating Certificate.**

24.1 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.

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 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 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 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 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 or 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**

29.1 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:



Connie Diaz, City Clerk

CITY OF DORAL

By: 

Edward A. Rojas, City Manager
Date: 8.15.18


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



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

PROVIDER

C. A.P. Government, Inc.

By: 

Carlos A. Penin, PE,
President

Date: 8/15/18

Exhibit "A"
Insurance Requirements

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. Workers Compensation
Statutory Limits- State of Florida

Employer's Liability

- A. 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

IV. Professional Liability/Error's & Omissions

- A. Limits of Liability (E&O)
- | | |
|---------------------|-------------|
| Each Claim | \$2,000,000 |
| Policy Aggregate | \$2,000,000 |
| Retro Date Included | |

- V. 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

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.

RESOLUTION No. 18-72

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING THE AWARD OF REQUEST FOR PROPOSALS #2018-04, "BUILDING INSPECTION AND PLAN REVIEW SERVICES," TO THE TOP RANKED FIRMS; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO AGREEMENTS WITH C.A.P GOVERNMENT AND CALVIN GIORDANO AND ASSOCIATES, INC, FOR A TERM OF THREE (3) YEARS WITH THE OPTION OF TWO (2) ADDITIONAL ONE (1) YEAR RENEWALS FOR A POSSIBLE TOTAL OF FIVE (5) YEARS IN AN AMOUNT NOT TO EXCEED ANNUAL BUDGETED FUNDS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on January 26, 2018, Request for Proposals #2018-04, "Building Inspection and Plan Review Services" (the RFP") was advertised for the provision of providing additional inspection and plan review services to the public; and

WHEREAS, two (2) proposal submittals were received on February 22nd, 2018 will all proposals meeting the required criteria; and

WHEREAS, an evaluation meeting was held on April 16, 2018 where all submitted proposals were scored and ranked. The evaluation committee of three (3) ranked proposals based on an average of a Three Hundred (300) Point System (up to 100 points per committee member. Proposal #2018-04 Building Inspection and Plan Review Services is to be awarded to the two (2) highest ranking firms:

1. CAP Government 283 points
2. Calvin, Giordano & Associates, Inc 277 points

WHEREAS, Staff has recommended that City Council Authorize the City Manager to negotiate and enter into an agreement with for the provision of providing additional

Inspection and Plan Review Services for a period of three (3) with the option for two (2) one (1) year renewals, for a possible total of five (5) years.

NOW THEREFORE, BE IT RESOLVED BY THE 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. Award. The award of Request for Proposals #2018-04 to C.A.P. Government and Calvin, Giordano & Associates, Inc for the provision of addition Building Inspection and Plan Review Services is hereby approved. This award, in and of itself does not vest any rights on any of the named parties .

Section 3. Authorization. The City Manager is hereby authorized to enter into an agreement with C.A.P. Government and Calvin, Giordano & Associates, Inc for the provisions of providing additional Building Inspection and Plan Review Services for a period of three (3) years, with the option for two (2) one (1) year renewals, for a total of five (5) years. The agreement is subject to approval by the City Attorney as to form and legal sufficiency and on such other terms and conditions as may be appropriate to protect and further the interests of the City. This Authorization does not create or confer any rights to C.A.P. Government and Calvin, Giordano & Associates, Inc. Budgeted funds will come from Account #001.7000.524.500310.

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

Section 5. Effective Date. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was offered by Vice Mayor Rodriguez who moved its adoption.

The motion was seconded by Councilmember Mariaca and upon being put to a vote, the vote was as follows:

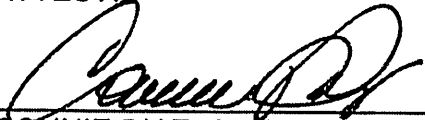
Mayor Juan Carlos Bermudez	Yes
Vice Mayor Ana Maria Rodriguez	Yes
Councilman Pete Cabrera	Absent/Excused
Councilwoman Christi Fraga	Yes
Councilwoman Claudia Mariaca	Yes

PASSED AND ADOPTED this 9 day of May, 2018.



JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



CONNIE DIAZ, CMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



WEISS, SEROTA, HELFMAN, COLE & BIERMAN, P.L.
CITY ATTORNEY