

AGREEMENT
BETWEEN
THE CITY OF DELRAY BEACH
AND
CALVIN GIORDANO & ASSOCIATES
FOR
COMPREHENSIVE PLAN CONSULTING SERVICES

This is an Agreement ("Agreement"), made and entered into by and between: Delray Beach, a municipal corporation of the State of Florida, hereinafter referred to as "City,"

And

Calvin Giordano & Associates (CGA), a Florida corporation, hereinafter referred to as "Second Party," (collectively referred to as the "Parties").

WITNESSETH:

In consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - This Agreement includes Articles 1 through 9, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Board** - The City Commission of Delray Beach, Florida.
- 1.3 **Contract Administrator** - The Delray Beach City Manager or the Director of Planning for Delray Beach. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Second Party and to manage and supervise execution and completion of the Scope of Services and

the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

- 1.4 **City Manager** - The administrative head of City appointed by the Board.
- 1.5 **City Attorney** - The chief legal counsel for City appointed by the Board.
- 1.6 **Project** - The Project consists of the services described in Article 2.

ARTICLE 2

SCOPE OF SERVICES

- 2.1 Second Party shall perform all work identified in this Agreement and Exhibit "A". The Scope of Services is a description of Second Party's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Second Party impractical, illogical, or unconscionable.
- 2.2 Second Party acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

ARTICLE 3

TERM AND TIME OF PERFORMANCE

- 3.1 This contract is in full force and effect upon full contract execution by the City of Delray Beach. The term of this agreement will be for two (2) years from the execution date. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 3.2 All duties, obligations, and responsibilities of Second Party required by this Agreement shall be completed after full contract execution by the City of Delray Beach.
- 3.3 In the event services are scheduled to end due to the expiration of this Agreement, the Second Party agrees that it shall continue service upon the request of the Contract Administrator. The extension period shall not extend for greater than three months beyond the term of the Agreement. The Second Party

shall be compensated for the service at the rate in effect when the extension is invoked by the City upon the same terms and conditions as contained in this Agreement as amended. The Chief Purchasing Officer shall notify Second Party of an extension authorized herein by written notice delivered prior to the end of the term of the Agreement.

ARTICLE 4

COMPENSATION

4.1 City will pay Second Party, in the manner specified in Exhibit A, Section II, the total amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) for work actually performed and completed pursuant to this Agreement. Second Party acknowledges that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Second Party for its services and expenses related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon Second Party's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

4.2 Second Party shall remit invoice to City at:

City of Delray Beach
100 NW 1st Avenue
Delray Beach, Fl. 33444
Attn: Cashier's Office

4.2.1 Second Party acknowledges that the dollar limitation set forth in Section 4.1 is a limitation upon, and describes the maximum extent of, City's obligation to reimburse Second Party, but does not constitute a limitation, of any sort, upon Second Party's obligation to perform the services identified in Article 2.

4.3 METHOD OF BILLING AND PAYMENT

4.3.1 Second Party may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed. Second Party shall submit with each invoice a Certification of Payments to Subcontractors and Suppliers (Exhibit "B"). The certification shall be accompanied by a copy of the notification sent to each subcontractor and

supplier listed in item 2 of the form, explaining the good cause why payment has not been made.

4.3.2 City shall pay Second Party within thirty (30) calendar days of receipt of Second Party's proper invoice, or as required by Florida Law. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of Second Party to comply with a term, condition, or requirement of this Agreement.

4.3.3 Second Party shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from City for such subcontracted work or supplies. If Second Party withholds an amount from subcontractors or suppliers as retainage, such retainage shall be released and paid within thirty (30) days following receipt of payment of retained amounts from City.

4.4 Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

4.5 Payment shall be made to Second Party at:

Calvin Giordano & Associates
1800 Eller Drive, Suite 600
Fort Lauderdale, Fl. 33316
T (954) 921-7781

ARTICLE 5

INDEMNIFICATION

Second Party shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Second Party, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting

from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Second Party shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Second Party under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by City.

ARTICLE 6

INSURANCE

- 6.1 Second Party shall maintain at its sole expense, at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit "C" in accordance with the terms and conditions stated in this Article.
- 6.2 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be provided on forms no more restrictive than the latest edition of the applicable form filed by the Insurance Services Office. Second Party shall name City as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is City of Delray Beach, Florida. This official title shall be used in all insurance documentation.
- 6.3 Within fifteen (15) days of notification of award, Second Party shall provide to City proof of insurance in the form of Certificate(s) of Insurance and applicable endorsements, Declaration pages, or insurance policies evidencing all insurance required by this Article. City reserves the right to obtain a certified copy of any policies required by the Article upon request. Coverage is not to cease and is to remain in force until the City determines all performance required of Second Party is completed. For Professional Liability Insurance, coverage shall remain in force for two (2) years after the completion of services unless a different time period is stated in Exhibit "C." City shall be notified of any restriction or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the work, proof of insurance renewal shall be provided to City upon expiration.
- 6.4 City reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements.

- 6.5 If Second Party uses a subconsultant or subcontractor, Second Party shall ensure that each subconsultant or subcontractor names "City of Delray Beach, Florida" as an additional insured under the subconsultant's or subcontractor's Commercial General Liability, Business Automobile Liability, and Excess/Umbrella policies.

ARTICLE 7

TERMINATION

- 7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by City, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health, safety, or welfare. If City erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.
- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, Second Party's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if the Second Party is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if the Second Party provides a false certification submitted pursuant to Section 287.135, Florida Statutes. This Agreement may also be terminated by the Board:
- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 7.4 In the event this Agreement is terminated for convenience, Second Party shall be paid for any services properly performed under the Agreement through the

termination date specified in the written notice of termination. Second Party acknowledges that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are, hereby acknowledged by Second Party, for City's right to terminate this Agreement for convenience.

- 7.5 In the event this Agreement is terminated for any reason, any amounts due Second Party shall be withheld by City until all documents are provided to City pursuant to Section 9.1 of Article 9.

ARTICLE 8

NON-DISCRIMINATION

- 8.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Failure by Second Party to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit the City, to terminate this Agreement or to exercise any other remedy provided under this Agreement, or under the Delray Beach Code of Ordinances or under applicable law, with all of such remedies being cumulative.

Second Party shall include the foregoing or similar language in its contracts with any subcontractors or sub-consultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate.

Second Party shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of any State or Federal law. Second Party shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Second Party shall take affirmative steps to prevent discrimination in employment against disabled persons.

By execution of this Agreement, Second Party represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. City hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle City to

terminate this Agreement and recover from Second Party all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

ARTICLE 9

MISCELLANEOUS

9.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City, and, if a copyright is claimed, Second Party grants to City a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Second Party, whether finished or unfinished, shall become the property of City and shall be delivered by Second Party to the Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to Second Party shall be withheld until all documents are received as provided herein.

9.2 PUBLIC RECORDS

City is a public agency subject to Chapter 119, Fla. Stat. Second Party shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, Purchaser agrees to:

- 9.2.1 Keep and maintain all records that ordinarily and necessarily would be required by the City.
- 9.2.2 Provide the public with access to public records on the same terms and conditions that the City would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
- 9.2.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
- 9.2.4 Meet all requirements for retaining public records and transfer, at no cost, to the City all records in possession of the Second Party at the termination of the contract and destroy any 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. All records shall be transferred to the City prior to final payment being made to the Second Party.

9.2.5 If Second Party does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

9.3 INSPECTOR GENERAL.

Second Party is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Second Party and its sub licensees and lower tier sub licensees. Second Party understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Second Party or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

9.4 AUDIT RIGHTS, AND RETENTION OF RECORDS

City shall have the right to audit the books, records, and accounts of Second Party and its subcontractors that are related to this Project. Second Party and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of Second Party and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Second Party or its subcontractor, as applicable, shall make same available at no cost to City in written form.

Second Party and its subcontractors shall preserve and make available, at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Second Party shall ensure that the requirements of this Section 9.3 are included in all agreements with its subcontractor(s).

9.5 TRUTH-IN-NEGOTIATION REPRESENTATION

Second Party's compensation under this Agreement is based upon representations supplied to City by Second Party, and Second Party certifies that the information supplied is accurate, complete, and current at the time of contracting. City shall be entitled to recover any damages it incurs to the extent such representation is untrue.

9.6 PUBLIC ENTITY CRIME ACT

Second Party represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

In addition to the foregoing, Second Party further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Second Party has been placed on the convicted vendor list.

9.7 INDEPENDENT CONTRACTOR

Second Party is an independent contractor under this Agreement. Services provided by Second Party pursuant to this Agreement shall be subject to the supervision of Second Party. In providing such services, neither Second Party nor its agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Second Party or Second Party's agents any authority of any kind to bind City in any respect whatsoever.

9.8 THIRD PARTY BENEFICIARIES

Neither Second Party nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

9.9 NOTICES

Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For City:

City Manager
City Hall
100 N.W. 1st Avenue
Delray Beach, Florida 33444

For Second Party:

Shelley Eichner, Principal In Charge
Calvin Giordano & Associates
1800 Eller Drive, Suite 600
Fort Lauderdale, Fl. 33316
T (954) 921-7781
Email: marketing@cgasolutions.com

9.10 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. In addition, Second Party shall not subcontract any portion of the work required by this Agreement, except as may specifically provided for herein. Notwithstanding the Termination provision of this Agreement, City may terminate this Agreement,

effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Second Party of this Agreement or any right or interest herein without City's written consent.

Second Party represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Second Party shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Second Party's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

9.11 CONFLICTS

Neither Second Party nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Second Party's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

None of Second Party's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Second Party is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Second Party or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Second Party is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Second Party shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Second Party.

9.12 MATERIALITY AND WAIVER OF BREACH

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

9.13 COMPLIANCE WITH LAWS

Second Party shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

9.14 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Second Party elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days of final court action, including all available appeals.

9.15 JOINT PREPARATION

The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

9.16 INTERPRETATION

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

9.17 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

9.18 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, SECOND PARTY AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

9.19 AMENDMENTS

The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Second Party or others delegated authority to or otherwise authorized to execute same on their behalf.

9.20 PRIOR AGREEMENTS

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence,

conversations, agreements, and understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

9.21 PAYABLE INTEREST

9.21.1 Payment of Interest. Except as required by the Prompt Payment laws, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Second Party waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

9.21.2 Rate of Interest. In any instance where the prohibition or limitations of Section 9.21.1 are determined to be invalid or unenforceable, the annual rate of interest payable by City under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

9.22 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. All Exhibits are incorporated into and made a part of this Agreement.

9.23 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

9.25 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: City through its Board, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 30th day of August, 2016 and Second Party, signing by and through its _____, duly authorized to execute same.

ATTEST:


Sherrill D. Nelson
City Clerk

CITY OF DELRAY BEACH, FLORIDA

By [Signature]
Cary D. Glickstein, Mayor
30th day of August, 2016.

APPROVED AS TO FORM:

[Signature]
Interim City Attorney Janice Rustin

AGREEMENT BETWEEN DELRAY BEACH, FLORIDA

AND

Calvin, Giordano & Associates, Inc.

SECOND PARTY

By Shelley Eichner
(Sign name)

Shelley Eichner, Senior Vice President
(Print name, Title)

22 day of August, 20 16

WITNESS:

[Signature]
(Sign name)

Richard D. Connor
(Print name)

WITNESS:

[Signature]
(Sign name)

Gianna J. Feoli
(Print name)

(SEAL)

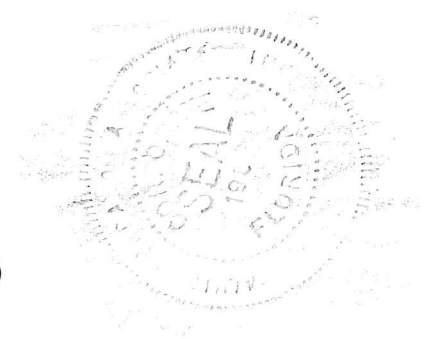


EXHIBIT A

SCOPE OF SERVICES

I. PHASE AND TASKS

Phase 1 – Start-up and Analysis

By establishing the format and review procedures early, including the establishment of table of contents, and a style guide and review format for each deliverable, CGA will create an annotated outline which will serve as a tracking “matrix” showing old and new sections that will be updated throughout the process. In addition, outreach and meeting dates will be further defined.

Our assessment will involve a thorough review of the City’s relevant documents including but not limited to the current Comprehensive Plan, Neighborhood and Redevelopment Plans, Special Studies/Plans, Regulations, Standards, and Definitions. A list of these documents will be provided by the City. We will synthesize the findings by formulating a matrix/annotated outline organized by chapter identifying the strengths, weaknesses and deficiencies within each element as well as what component to include in the new elements.

Deliverables

- *Document formats for all deliverables including but not limited to the main plan, maps, Citizen pamphlet, E-Newsletter, website, meeting minutes, presentations, survey, meeting handouts, and the supporting data. This shall take into account the arrangement of elements into four (4) broad areas such as Context, Natural Environment, Built Environment and Implementation.*
- *List off the existing and needed supporting data*
- *Annotated Outline/Matrix*
- *Format of Kickoff Meeting*
- *Format of E-Newsletter and timing. City staff will provide layout, distribution content for eight (8) E-newsletters throughout the process unless noted.*
- *Schedule of Project Team Meetings, fourteen (14) total*
- *Minutes of staff and other meetings*

Phase 2 – Kick Off

Upon completing the initial assessment, CGA along with City staff will facilitate a kick-off meeting with Planning Staff, the Steering Committee, and the Planning and Zoning Board at a public meeting. This meeting will be legally noticed as well as advertised through the website and social media to encourage public involvement. CGA will discuss information needed to formulate the issues to address in the rewrite of the Comprehensive Plan as well as the schedule for meetings. This initial meeting will also discuss the best methods for ways the project team will provide outreach to the community.

Deliverables

Deliverables will be provided in both written and electronic format to include:

- *Power Point Presentation*
- *Updated Annotated Outline*
- *Information for website and social media platform. CGA will provide materials including text, photographs, maps, renderings, and other images for the City's website.*
- *Meeting Minutes;*
- *Hardcopy Meeting Notices (copies, postage and envelopes excluded)*
- *Digital Meeting Notices (email blast from dedicated web page, city email/notification system, department Twitter account, etc.)*

Phase 3 – Steering Committee and Newsletters

CGA along with the City staff will organize and lead Steering Committee meetings, a total six (6) (excluding the initial kick-off meeting) meetings. At each meeting, CGA will provide full project status reports in order to receive guidance and direction on the work products.

Deliverables

- *Written Project Status Report*
- *Presentation Materials*
- *Six (6) of the eight (8) E-Newsletters; one after each committee meeting summarizing what took place. City staff will provide layout, distribution and content of newsletter.*
- *Meeting Minutes*
- *Web Page Updates*
- *Hardcopy Meeting Notices (copies, postage and envelopes excluded)*
- *Digital Meeting Notices (email blast from dedicated web page, city email/notification system, department Twitter account, etc.)*
- *Updated Annotated Outline*
- *Any Supporting Data and Analysis*

PHASE 4 – INDIVIDUAL AND GROUP INTERVIEWS

To understand the issues with the Comprehensive Plan, the people identified by staff and/or the Steering Committee as the key users will be interviewed on a one-on-one or group basis to ascertain their recommendations for the update to the comprehensive plan. CGA will conduct fifteen (15) interviews or meetings with key neighborhood groups, organizations, companies, and individuals identified by City staff and/or the Steering Committee.

The issues, ideas, and recommendations identified through the interview process will be summarized and prepared into a presentation for the community workshop.

Deliverables

- *Attendance at fifteen (15) interviews; Interviews may be scheduled in conjunction with other CGA visits.*
- *Presentation Materials*
- *Meeting Minutes*

PHASE 5 – COMMUNITY WORKSHOPS AND SURVEY

CGA will conduct four (4) community workshops as part of the public outreach process.

The issues, ideas, and recommendations identified through the interview process and steering committee meetings will be summarized into a presentation for the four (4) community workshops. Invitations to the workshops will be broad based to community groups, residents, business owners and managers, land owners, and members of the development community. CGA will reach out using a variety of means such as a general mailing, posted flyers, announcements on Commission and Board agendas, website postings media outlets, and postings on any social media the city utilizes to reach out to the citizens of Delray Beach. The CGA Team will make a point of asking participants that attend the community workshop how they heard about it so the most effective means of getting the word out can be identified and emphasized during the remainder of the outreach process.

Invitations to the workshops will be broad based and include outreach to residents, business owners and managers, land owners, contractors, and other members of the community. CGA will assist the City with advertisements including a general postcard mailing, flyers, announcements on City and Board agendas, postings to the project website portal and any social media sites the City utilizes to reach out to its citizens.

Before each workshop, the CGA Team along with City staff will prepare a presentation explaining the purpose of the meeting. This will include but shall not be limited to an explanation for any proposed recommendations or changes in order to facilitate the discussion and elicit input from the attendees. CGA will present the issues, ideas, and recommendations identified to date through the interviews with the various users. The audience will then be directed to join a small groups for a facilitated discussion of issues that pertain to them. The three groups can be but are not limited to:

- Residents and Homeowners
- Business owners, commercial land owners, and commercial tenants
- The development community

A CGA and/or City staff member will facilitate each group and take notes on the issues, ideas, and recommendations that are discussed. After this breakout session, each group will report back their findings to the main group. CGA will provide Hand held voting devices or similar method in order to gauge the opinions and/or concerns while ensuring that each attendee is able to voice their opinion in an anonymous fashion while giving opportunity for further discussions.

This input will be used in the development of the status reports presented to the steering committee.

Throughout these workshops, CGA staff will compile and maintain an email list of interested parties in order to keep them informed of all work products prepared for public discussion as well as upcoming meetings and links to draft work products.

CGA, with City staff input, will prepare a web based survey to be disseminated to the citizens, businesses, and interest groups in the City via email, social media, the project website, and other methods as determined by City staff. The purpose of the survey is to seek input and opinions to help guide the formation of the Cities goals, objectives and policies for the new comprehensive plan.

Deliverables

- *Attendance at Four (4) Community Workshops*
- *Web Page Updates*
- *Hardcopy and Electronic Meeting Notices (copies, postage and envelopes excluded)*
- *CGA will assist City Staff in drafting one (1) summary article for the E-Newsletter. City staff will provide layout, distribution and remaining content.*
- *Digital Meeting Notices (email blast from dedicated web page, city email/notification system, department Twitter account, etc.)*
- *Community workshop presentation materials*
- *Updated Annotated Outline*
- *Meeting minutes*
- *Supporting Data and Analysis*
- *Draft and Final Survey*
- *Survey Results and analysis*

Phase 6 – Public officials and Community Representative’s Roundtable

At part of this phase in the project the results of all community workshops, steering committee work sessions and individual/group interviews will be presented at a joint meeting of the Planning and Zoning Board and the City Commission. Included will be a summary of any policy considerations needing input.

Deliverables

- *Updated Annotated Outline*
- *Briefing Book summarizing results*
- *Policy Considerations*
- *Presentation Materials*
- *Web Page Updates*

- *Hardcopy Meeting Notices (copies, postage and envelopes excluded)*
- *Digital Meeting Notices (email blast from dedicated web page, city email/notification system, department Twitter account, etc.)*

Phase 7 – Final Analysis and Draft Plan

The update to the Comprehensive Plan will be a culmination of both previous goals, objectives, and policies and the new goals, objectives and policies and will include an existing conditions analysis, summary of the stakeholder interviews, analysis of regulations and planning issues, summary and analysis of the citizen input survey, and public input received through the community outreach effort. We will evaluate potential land use changes in relation to the current land use designations and existing uses. CGA will evaluate major property holdings, development regulations, public amenities, including but not limited to civic facilities, parks and open space, public and private infrastructure, circulation patterns and gaps, and transportation facilities and needs.

CGA will collect data consistent with Chapter 163.3177 Florida Statutes (F.S.) and provide all document so that they meet the requirements of Chapter 163.3191 F.S. In order to accomplish this, the CGA team will gather and analyze existing information for all comprehensive plan elements from the South Florida Water Management District, Palm Beach County, Florida Department of Transportation, Department of Environmental Protection, Shimberg Institute (University of Florida), Florida Department of Economic Opportunity, Florida Department of State, South Florida Planning Council, and other public and private service providers according to the requirements of Chapter 163 F.S. The revised new Data, Inventory and Analysis will provide the baseline for any new or amended Goals, Objectives and Policies.

The analysis will include the preparation of the GIS maps necessary to display and support the elements in the Comprehensive Plan.

Included in the evaluation will be an analysis of the following:

1. Land use and the extent of vacant and developable land
2. Regional location, land use patterns, and significant regional issues and topics
3. Population, household and labor force characteristics and trends
4. Employment and economic characteristics and trends
5. Housing
6. Quality of life factors
7. Transportation system and circulation
8. Natural, cultural resources
9. Historic resources
10. Community, parks, and recreation facilities
11. Neighborhood areas and organizations
12. Public services, permitting and regulations
13. Intergovernmental coordination
14. Infrastructure
15. Coastal management including sea level rise

CGA will prepare a working draft of proposed goals, objective and policies and supporting data and analysis to provide consistency with Chapter 163.3177 Florida Statutes (F.S.). The plan must be based on at least the minimum amount of land required to accommodate population projections for at least a 10-year planning period, the elements must be consistent with each other. With an emphasis on targeted strategies for one, three and five year initiatives, the Comprehensive Plan will include the following 15 elements:

1. Future Land Use
2. Transportation & Mobility (Including Complete Streets policy and a Bike/Ped Master Plan)
3. Housing
4. Public Facilities
5. Coastal Management
6. Conservation
7. Open Space and Recreation
8. Economic Development (new)
9. Sustainability & Resilience (new)
10. Healthy Community (new)
11. Historic Preservation (new)
12. Intergovernmental Coordination
13. Capital Improvement
14. Public School Facilities
15. Education (new)

The Comprehensive Plan will be a culmination of existing conditions, an analysis of regulations and planning issues, and public input received through the extensive community outreach effort. We will evaluate potential land use changes in relation to the current land use.

CGA has installed an optimum GIS network environment to provide the most up to date mapping necessary for the update to the Comprehensive Plan. CGA will provide the City will all necessary maps to meet the requirements of Chapter 163.3177 F.S and any additional maps necessary for the City to achieve its goals.

CGA has the ability to produce high quality 2-dimensional and 3-dimensional graphics in support of any illustrative needs of the project. These include the ability to prepare fully rendered maps, plans, sections and elevations, as well as massing models and photo-realistic montages for before-and-after and visioning images. We currently hold 8 licenses for the entire Adobe Creative Cloud with all the latest graphic, photographic and layout creative software (including Photoshop, Illustrator, InDesign, Lightroom, Adobe Pro), over 60 AutoCAD drafting programs in various versions and iterations, ArcGIS graphic information software, 3d software including SketchUP, Maya and Rhinoceros, and photo-realistic rendering platforms including V-ray, SU Podium, and Maxwell Render.

All maps for the Comprehensive Plan will be developed using available data. As a minimum, the map series proposed for the plan shall include approximately sixty (60) maps as well as all required maps pursuant to Florida Statutes which include:

1. Regional Context Base Map
2. Land Use Maps (existing and future)
3. Transportation Network Maps
4. Community Facilities Maps
5. Public Services Maps
6. Natural Resources Maps
7. Cultural and Historic Resources Maps

Graphic Support

1. Sense of Place Character Images
2. Diagrams
3. Tables and Charts
4. Supporting Graphics
5. Web Graphics

Other maps or graphics may be developed and included as mutually agreed upon by City of Delray Beach and CGA.

Deliverables

- *Draft Comprehensive Plan (pdf and word) inclusive of goals, objectives and policies, approximately sixty (60) maps and seventy-five (75) tables/charts. It is estimated that the document will be between 450-550 pages.*
- *Web Page Updates*
- *Updated Annotated Outline*
- *CGA will assist City Staff in drafting one (1) summary article for the E-Newsletter. City staff will provide layout, distribution and remaining content*

Phase 8 – Implementation Strategy

CGA will create a short term work plan for the City. This matrix will describe proposed land development and zoning code amendments to be adopted by the City to facilitate the implementation of the Comprehensive Plan. CGA will review the Capital Improvement Plan to confirm that there are no conflicts with the proposed Comprehensive Plan update as well as the proposed code amendment list. CGA will also provide list of all goals, objectives and policies that have specific timeframes for implementation in a matrix for easy tracking. This will allow the City to annually review and update the plan.

Deliverables

- Short-Term Work Plan (pdf and word)
- Program Matrix (pdf and word)

Phase 9 - Public Hearing/Adoption

The final draft of the Comprehensive Plan will be presented at this time to the Planning and Zoning Board/LPA for review and recommendation. An executive summary outlining the public participation process, revisions, changes and rationale for the draft recommendations will be presented. Each section will be discussed with the opportunity for modifications, revisions, additions and deletions.

Based on the input received, revisions will be made to the entire draft document if necessary. The modifications will be reviewed for internal consistency within the document and in keeping with the desires of the public. Map changes will also be reviewed concurrently.

The final draft of the Comprehensive Plan will be presented at this time to the City Commission. A briefing book summarizing the public participation process, revisions, policy direction, changes and rationale for the recommendations will be presented.

Final Deliverables

Final deliverables shall include the original format documents as well as PDF versions and will include:

- Five (5) hard copies of the full plan, including the Policy document and the Backup data
- A print ready PDF file, and an original editable version of all the Plan documents
- All maps including GIS files using a mapping tool identified for City's needs
- Policy manual that meets all State requirements
- Background reports and data for each element
- An Citizen Pamphlet of the plan that will contain an overview of the plan, a summary of each element, and the key policies that can be handed out to all residents and businesses to serve as a marketing piece. A third party translation service will be arranged by CGA to provide the pamphlet in Creole and Spanish
- A web version of the plan that is interactive with hyperlinks, and easily searchable
- Final Implementation Strategy with measurable benchmarks.

II. SCHEDULE AND FEE

| PHASE | TASKS | ANTICIPATED COMPLETION | ESTIMATED HOURS AND FEE |
|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-------------------------|
| 1 | Startup and Analysis a. Commencement meeting with staff to discuss format, workflow etc. b. Review and analysis of current Comprehensive Plan and supplemental strategic/vision plans c. Develop format for project kick off meeting | July 2016 September 2016 July/August 2016 | \$5,400/36 hrs. |
| 2 | Community Kickoff a. Assist in Development of Web Site b. Set up social media platform c. Kick-off Meeting | July/August 2016 July/August 2016 September 2016 | \$12,000/80 hrs. |
| 3 | Steering Committee and E-Newsletter a. Steering Committee Work Session 1 b. Steering Committee Work Session 2 c. Steering Committee Work Session 3 d. Steering Committee Work Session 4 e. Steering Committee Work Session 5 f. Steering Committee Work Session 6 g. E-Newsletter distribution to coincide with the steering committee work sessions | October 2016 November 2016 January 2017 March 2017 April 2017 May 2017 | \$30,000/200 hrs. |
| 4 | Individual and Group Interviews a. 12 Individual and/or Group interviews | October 2016 November 2016 | \$12,000/80 hrs. |
| 5 | Community Workshops and Survey a. Workshop 1 b. Workshop 2 c. Workshop 3 d. Community Survey e. Community Workshop 4 | October 2016 November 2016 December 2016 November 2016 May/June 2017 | \$25,000/167 hrs. |
| 6 | Public Officials and Community Representative's Roundtable | January 2017 | \$10,800/72 hrs. |
| 7 | Draft Plan a. Complete analysis and provide draft amendment package to staff for review including: <ul style="list-style-type: none"> • Volume 1 Proposed Amendment to the GOPs • FLUM Amendments • GIS maps • Volume 2 New Data and Analysis | May 2017 | \$105,500/704 hrs. |
| 8 | Implementation Strategy a. Short Term Work Plan b. Prepare annual update program in matrix | June 2017 | \$12,000/80 hrs. |

| | | | |
|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|--------------------------|
| 9 | Public Hearings and Adoption a. LPA Hearing b. Transmittal package and presentation at public hearing c. Adoption package and presentation at public hearing d. Summary list of future code amendments e. Final copy to City after NOI issued by DEO | August 2017 September 2017 October 2017 November 2017 December 2017 | \$36,000/240 hrs. |
| | FINAL ADOPTION | 18 MONTHS | \$250,000 |

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EXHIBIT B

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

RFP/RLI/Bid/Contract No. _____

Project Title _____

The undersigned CONTRACTOR hereby swears under penalty of perjury that:

1. CONTRACTOR has paid all subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this project in accordance with Section 4.2.3 of the Agreement, except as provided in paragraph 2 below.
2. The following subcontractors and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

| Subcontractor or Supplier's name and address | Date of disputed invoice | Amount in dispute |
|----------------------------------------------------|-----------------------------|----------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

3. The undersigned is authorized to execute this Certification on behalf of CONTRACTOR.

Dated _____, 20__

Contractor

By _____
(Signature)

By _____
(Name and Title)

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS
(Continued)

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this _____ day of _____, 20__.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

(Name of officer taking acknowledgment)
typed, printed, or stamped

(Title or rank)

(Serial number, if any)

My commission expires:

EXHIBIT C

INSURANCE REQUIREMENTS OF THE CITY OF DELRAY BEACH

Second Party shall not commence operations under the terms of this Agreement until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Delray Beach Risk Manager. If you have any questions call (561) 243-7150.

The following insurance coverage shall be required.

- A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute 440 and including Employers Liability coverage, regardless of the size of your firm. Second Party further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course and scope of their employment.
- B. General liability insurance with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually, providing coverage for Premises and Operations, Products and Completed Operations, Fire Legal Liability, and Personal and Advertising Injury Liability. Insurance Policies must be obtained through insurance companies that are authorized to transact business in the State of Florida by the Department of Financial Services, and they must carry a minimum rating of A.M. Best of A- as to management and VII as to financial size.
- C. Motor Vehicle Liability Insurance covering all vehicles associated with Second Party operations to include all owned, non-owned and hired vehicles.

The coverage will be written on an occurrence basis with limits of liability not less than \$500,000.00 combined single limit per each occurrence.
- D. The certification or proof of insurance must contain a provision for notification to the City thirty (30) days in advance of any material change in coverage, non-renewal or cancellation.

Second Party shall furnish to the City, Certificate(s) of Insurance evidencing insurance required by the provisions set forth above and detailing that the City is included as an "additional insured". If any of the above coverages expire during the term of this Agreement, Second Party will provide a renewal certificate at least ten (10) days prior to expiration.

Mail to: City of Delray Beach, Attn. Purchasing, 100 N.W. 1st Avenue, Delray Beach, Florida 33444 with a copy to Assistant City Manager, 100 N.W. 1st Avenue, Delray Beach, FL 33444