

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

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

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

WHEREAS, the City desires to retain Provider to prepare a business plan for DCP for cost estimating and planning purposes; and

WHEREAS, the Provider and City, through mutual negotiation, have agreed upon a scope of services, schedule, and fee for the development of a business plan for DCP (the "Project"); and

WHEREAS, the City desires to engage the Provider to perform the services specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Provider and the City agree as follows.

1. **Scope of Services/Deliverables.**

- 1.1 The Provider shall furnish professional services to the City as set forth in the Scope of Services, attached hereto as Exhibit "A", which is incorporated herein and made a part hereof by this reference.
- 1.2 The "Scope of Services" includes a Project Schedule for the Project which includes a breakdown of tasks, timeline and deliverables to the City.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect completion of the Project, unless earlier terminated in accordance with Paragraph 8.
- 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.**

The City shall be compensated in the following manner:

X On a time and material/expense basis to complete the Scope of Services, provided, however, that total payments to Provider shall not exceed \$ 15,000.00, without the prior written approval of the City. Consultant shall submit its bills in arrears upon the completion of each task or deliverable in accordance with the Project Schedule or on a monthly basis in a form approved by the City. The bills shall show or include: (i) the task(s) performed; (ii) the time devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement or by City staff shall not be reimbursed.

4. **Sub-providers.**

4.1 The Provider shall be responsible for all payments to any sub-providers 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 Project as is ordinarily provided by a professional consultant 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 Provider's 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 for any reason may terminate this Agreement upon thirty (30) days written notice to the Consultant, or immediately with cause, with cause defined as an alleged violation of the Federal, State, County, or City law, as determined by the City Manager in his/her sole discretion, or such action which may detrimentally affect the health, safety, and welfare of the community, as determined by the City Manager in his/her sole discretion.

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.

9. **Insurance.**

9.1 The Consultant shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by **Exhibit B**. The insurance carrier shall be qualified to do business in the

State of Florida and have agents upon whom service of process may be made in the State of Florida.

- 9.2 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted, or in accordance to policy provisions. The City further reserves the right to solicit additional coverage, or require higher limits of liability as needed, and depending on the nature of scope, or level of exposure.

10. **Nondiscrimination.**

- 10.1 During the term of this Agreement, 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 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 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 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: Gabriela Casanas
Owner / President
15131 SW 46 Terrace
Miami, FL 33185

14. **Governing Law.**

14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Miami-Dade County, Florida.

15. **Entire Agreement/Modification/Amendment.**

15.1 This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

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

16.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the 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 Pursuant to Section 119.0701, Florida Statutes, Provider shall:

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

(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statute, or as otherwise provided by law;

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and

(d) Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the Provider upon termination of the contract and destroy any duplicate public records that

are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

16.4 The City may cancel this Agreement for refusal by the 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 contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. **Compliance with Laws.**

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

21. **Waiver**

21.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver

of the violation or breach, or of any future violation, breach or wrongful conduct.

22. **Survival of Provisions**

22.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

23. **Prohibition of Contingency Fees.**

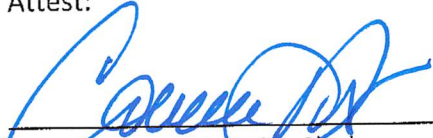
23.1 The Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Provider, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a 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.

24. **Counterparts**

24.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.


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

Attest:



Connie Diaz, CMC, City Clerk

CITY OF DORAL

By:  (Edward)

Edward A. Rojas, City Manager
Date: 10.3.17

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

PROVIDER

By: Katherine Younger
Its: Chief Executive Officer
Date: October 2, 2017

Exhibit “A”

Scope of Services

TASK 1: DATA GATHERING

Kick-off Meeting – PROS will participate in a virtual kick-off meeting to confirm project goals, outcomes and expectations for communication throughout the process.

Demographic, Trends, and Market Analysis – PROS will utilize the demographics data obtained as a part of the Master Plan and supplement that with site specific information developed. The following steps will provide the basis for the Market Definition:

- **Service Provider Analysis** – PROS will analyze all major direct and indirect service providers. Direct and indirect service providers will be based on typical services/programs administered in similar parks. This data will be utilized to compare against the activities and programs identified in the Market Definition. An inventory of comparable facilities will be performed on a local and regional basis to attempt to quantify market share.
- **Market Definition** – The PROS Team will confirm the size of the market by age segment and race/ethnicity for the study area. Detailed demographic analysis will be compared to potential recreational activities to estimate potential participation per national and local trends. This will help to determine the size of the activity market by age segment and frequency rates that can be applied to the sites.

Fees: \$5500

TASK 2: Community Input

- **Key Leader / Stakeholder Interviews** – The PROS team will meet key stakeholders over a 1 day period to discuss the potential programming and partnership options as well as their vision for the park's successful operating model.
- **Website / Online Input:** The PROS team will utilize the existing website www.playdoral.com for updates and to solicit programming feedback as well as sharing project updates with the community in Doral as well.

Fees: \$6500

TASK 3: PARK PROGRAMMING

Park Programming – Equipped with an understanding of the market, feedback from stakeholder/community input, and other data collection, PROS will work with the city of Doral staff to define core programs and services for Doral Central Park. This will include key activities and programs for both adult and youth participants as well as the potential size of the core program, and market positioning. The outcome of this task will be used to establish financial performance and partnership alternatives.

Fees: \$3000

Phase 1 Total - \$15000

Trips: 1 trip (reimbursable at actuals)



Phase 2

TASK 4: OPERATIONAL and COST ESTIMATES

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

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

Fees: \$5000

TASK 5: FINALIZING THE PLAN

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

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

Fees: \$2500

Phase 2 Total - \$7500

Trips: 1 trip (reimbursable at actuals)