

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF DORAL
AND
FLORIDA ATLANTIC UNIVERSITY (FAU) BOARD OF TRUSTEES / JOHN
SCOTT DAILEY FLORIDA INSTITUTE OF GOVERNMENT AT FAU
FOR
RECORDS MANAGEMENT CONSULTING SERVICES**

THIS AGREEMENT is made between **FLORIDA ATLANTIC UNIVERSITY (FAU) BOARD OF TRUSTEES / JOHN SCOTT DAILEY FLORIDA INSTITUTE OF GOVERNMENT AT FAU**, a Florida Public University, (hereinafter the "Consultant"), and the **CITY OF DORAL, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

RECITALS

WHEREAS, the Consultant and City, through mutual negotiation, have agreed upon a scope of services, schedule, and fee for Records Management Consulting Services (the "Project"); and

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

AGREEMENT

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

1. Scope of Services/Deliverables.

- 1.1 The Consultant shall furnish professional services to the City as set forth in the Scope of Services as specified in **Exhibit "A"** attached to this Agreement and incorporated herein 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 through November 9, 2021, unless earlier terminated in accordance with Paragraph 8, with the option of the City to renew for two (2) additional one (1) year periods. The City Manager may extend the term of this Agreement up to an additional 180 days by written notice to the Consultant.

3. Compensation and Payment.

3.1 The Consultant shall be compensated in the following manner:

An amount not to exceed TWENTY THOUSAND DOLLARS AND NO CENTS (\$20,000.000) to complete deliverables as specified in Exhibit "A". In the event that the options to renew (as stated in Section 2.1 herein) are exercised, the total payments to the Consultant shall not exceed the amounts approved by the City Council in the budget, without written approval of the City. The bill[s] shall identify the services completed and the amount charged.

3.2 The City shall pay the Consultant in accordance with the Florida Prompt Payment Act.

3.3 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

4. City's Responsibilities.

4.1 Furnish to the Consultant, at its written request, existing studies, reports, and other data pertinent to the services to be provided by the Consultant to the City.

5. Consultant's Responsibilities.

5.1 The Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as in ordinarily provided by a consultant under similar circumstances. If at any time during the term of this Agreement, it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the Scope of Services, upon written notification from the City Manager, the Consultant shall at its sole expense, immediately correct the work. The City in no way assumes or shares any responsibility or liability of the Consultant under this agreement.

6. Termination.

6.1 The City Manager may terminate this agreement immediately with cause or upon thirty (30) days written notice to the Consultant without cause. Cause shall include but not be limited to a failure on the part of the Consultant to: follow the reasonable Service directives of the City; cure a breach of this Agreement within ten (10) days of receiving the notice of breach or five (5) days before the anticipated Service, whichever is less; and/or failure to abide by local, state, and federal laws and regulations in performance of the duties provided herein.

6.2 Upon receipt of the City's written notice of termination, the Consultant shall stop work.

- 6.3 In the event of termination by the City, the Consultant shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 6.4.
- 6.4 The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Service 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.

7. Insurance.

- 7.1 The Consultant shall secure and maintain throughout the duration of this Agreement professional liability insurance. The certificate of insurance shall be attached as **Exhibit "B"** to this Agreement. 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.

8. Nondiscrimination.

- 8.1 During the term of this Agreement, the Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, gender identity or gender expression or national origin and agrees to abide by all Federal and State laws regarding nondiscrimination.

9. Attorneys' Fees and Waiver of Jury Trial.

- 9.1 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.
- 9.2 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.

10. Indemnification.

- 10.1 The Consultant 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 the Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from Agreements between the Consultant and third parties made pursuant to this Agreement. The Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with the Consultant's performance or non-performance of this Agreement.

10.2 The provisions of this section shall survive termination of this Agreement.

10.3 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.

11. Notices/Authorized Representatives.

11.1 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: Albert P. Childress
 City Manager
 City of Doral, Florida
 8401 NW 53rd Terrace
 Doral, Florida 33166

With a Copy to: Luis Figueredo, Esq.
 City Attorney
 City of Doral, Florida
 8401 NW 53rd Terrace
 Doral, Florida 33166

For the Consultant: Florida Atlantic University Board of Trustees
 John Scott Dailey Florida Institute of Government at
 Florida Atlantic University
 777 Glades Road
 Building 44, Room SO 277
 Boca Raton, FL 33431

12. Governing Law.

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

13. Entire Agreement/Modification/Amendment.

13.1 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.

13.2 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.

14. Ownership and Access to Records and Audits.

14.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.

14.2 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Consultant involving transactions related to this Agreement.

14.3 The City may cancel this Agreement for refusal by the Consultant 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.

14.4 In addition to other contract requirements provided by law, the Consultant shall comply with public records laws, specifically to:

- (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 this chapter or as otherwise provided by law;
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the City 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 City in a format that is compatible with the information technology systems of the City.

15. No assignability.

15.1 This Agreement shall not be assignable unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal

expertise of the Consultant, and such firm's familiarity with the City's area, circumstances and desires.

16. Severability.

16.1 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.

17. Independent Contractor.

17.1 The Consultant 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.

18. Representations and Warranties of the Consultant.

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

- (a) It shall maintain in good standing all required licenses, certifications and permits required under federal, state and local laws necessary to perform the Services hereunder;
- (b) The Consultant 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;
- (c) The execution, delivery and performance of this Agreement by the Consultant has been duly authorized and no consent of any other person or entity to such execution, delivery and performance is required to render this Agreement a valid and binding instrument enforceable against it in accordance with its terms; and
- (d) The Consultant has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional and first-class manner.

19. Compliance with Laws.

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

19.2 The Consultant shall not commit nor permit any violations of applicable federal, state, county and municipal laws, ordinances, resolutions and governmental rules, regulations and orders, as may be in effect now or at any time during the term of this Agreement, all as may be amended, which are applicable.

20. Non-collusion.

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

21. Truth in Negotiating Certificate.

21.1 The Consultant hereby certifies, covenants, and warrants that wage rates and other factual unit costs supporting the compensation for the Services that may be offered pursuant to this Agreement are accurate, complete, and current.

22. Waiver

22.1 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.

23. Survival of Provisions

23.1 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.

24. Prohibition of Contingency Fees.

24.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

25. Force Majeure.

25.1 It is understood that performance of any act by the City or the Consultant hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts or any cause beyond the reasonable control of such party, provided

however, the City shall have the right to provide substitute service from third parties or City forces as may be necessary to meet City needs. 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

26. Counterparts

26.1 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.

27. Interpretation.

27.1 The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. 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.

27.2 Preparation of this Agreement has been a joint effort of the City and the Consultant and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

28. Discretion of City Manager.

28.1 Any matter not expressly provided for herein dealing with the City or decisions of the City shall be within the exercise of the reasonable professional discretion of the City Manager.

29. Third Party Beneficiary

29.1 The Consultant and the City agree that it is not intended that any provision of this Agreement establishes a third-party beneficiary giving or allowing any claim or right of action whatsoever by any third party under this Agreement.

30. No Estoppel


30.1 Neither the City's review, approval and/or acceptance of, or payment for services performed under this Agreement shall be construed to operate as a waiver of any rights under this Agreement of any cause of action arising out of the performance of this Agreement, and the Consultant shall be and remain liable to the City in accordance with applicable laws for all damages to the City caused by the Consultant's negligent performance of any of the services under this Agreement. The rights and remedies provided for under this Agreement are in addition to any other rights and remedies provided by law.

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

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

Attest:

CITY OF DORAL



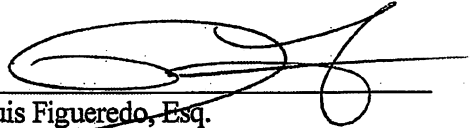
Connie Diaz, MMC City Clerk

By: 

Albert P. Childress, City Manager

Date: Jul. 29, 2021.

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



Luis Figueredo, Esq.
City Attorney

**Florida Atlantic University Board of
Trustees/John Scott Dailey Florida Institute
of Government at Florida Atlantic
University (FAU)**

By: Russell Juy, Sr. Assoc. Provost
Its: Russell Juy
Date: 1/21/20

Exhibit "A" Scope of Services

1. Project.

The Scope of Services includes but is not limited to the following:

- Assistance with monitoring changing legislation, Attorney General and Court opinions relating to public records;
- Assistance with monitoring changing Florida Administrative Code provisions and retention schedules;
- Assistance with designing filing systems for each Department in the City of Doral;
- Professional training and assistance for Staff Record Coordinators; available on monthly basis;
- Assistance with compiling Disposition Lists. The list of Record Series titles grows with each passing retention unit as retention requirements are met.
- Assistance with integration of technology and changing standards in the Florida Administrative Code, specifically Rule Chapter 1B-26;
- Assistance with monitoring service providers for compliance (i.e. records storage provider);
- Assistance with designing and implementing file arrangements to ensure disposition efficiency and data retrieval; and
- Assistance with any other public record-related service as the need arises.

2. Project Schedule.

Tasks

- a. Design file system for City Departments in order of priority to facilitate the disposition of records.
 - a. Work to be completed throughout the year.
- b. Disposition List for corresponding fiscal year.
 - a. Work to be completed by February 1st of each year

3. Daily Rates.

The consultant will provide ten days of Records Management Consulting Services at a rate of \$2,000.00 per day.

RESOLUTION No. 21-02

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE FLORIDA ATLANTIC UNIVERSITY (FAU) BOARD OF TRUSTEES / JOHN SCOTT DAILEY FLORIDA INSTITUTE OF GOVERNMENT AT FAU, FOR THE PROVISION OF CITYWIDE RECORDS MANAGEMENT CONSULTING SERVICES IN AN AMOUNT NOT TO EXCEED BUDGETED FUNDS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT FOR A PERIOD OF THREE (3) YEARS WITH AN OPTION TO RENEW FOR TWO ADDITIONAL ONE (1) YEAR PERIODS, AND TO EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Doral has approved a Records Management Plan via Ordinance 2008-10 that creates a fully compliant and accessible records management system in keeping with the vision of transparency in government; and

WHEREAS, said Records Management Plan requires constant monitoring to ensure continuing legal compliance, economy and efficiency; and

WHEREAS, the management of Public Records in today's environment, changing technologies and increasing public demand for access is ever more complicated; and

WHEREAS, the John Scott Dailey Florida Institute of Government, established in 1981, is an entity dedicated to its mission of enhancing the capacity of Florida's governments and communities through education and training, technical assistance, applied research, and public service; and

WHEREAS, the John Scott Dailey Florida Institute of Government provides the City with highly specialized public records management services, and it is in the City's best interest to continue to utilize John Scott Dailey Florida Institute of Government. The City Clerk respectfully requests that the City Council authorize the City Manager to negotiate and enter into an agreement with the Florida Atlantic University (FAU) Board of

Trustees/John Scott Dailey Florida Institute of Government for the provision of records management consulting services in an amount not to exceed budgeted funds according to the terms of the agreement included herein. Funding for this service will come from General Government Account No. 001.50005.500310.

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

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

Section 2. Approval and Authorization. The Mayor and City Council of the City of Doral hereby authorizes the City Manager to enter into an agreement with Florida Atlantic University (FAU) Board of Trustees/John Scott Dailey Florida Institute of Government to provide Records Management Consulting Services in an amount not to exceed budgeted funds per fiscal year.

Section 3. Implementation. The City Manager and the City Attorney are hereby authorized to take such action as may be necessary to implement the provisions of this Resolution.

Section 4. Effective Date. This resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Councilmember Mariaca who moved its adoption. The motion was seconded by Councilmember Puig-Corve and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Pete Cabrera	Yes
Councilwoman Digna Cabral	Yes
Councilwoman Claudia Mariaca	Yes
Councilman Oscar Puig-Corve	Yes

PASSED AND ADOPTED this 13 day of January, 2021.




JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



CONNIE DIAZ, MMC
CITY CLERK

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



LUIS FIGUEREDO, ESQ.
CITY ATTORNEY