



AGENDA ITEM MEMORADUM

Item No. 136

Town Manager's Office

Bud Bentley

Department

ACM

COMMISSION MEETING DATE (*) - 7:00 PM	Deadline to Town Clerk
<input checked="" type="checkbox"/> Dec 13, 2011	Dec 2 nd

*Subject to Change

- Presentation Reports Consent Ordinance
 Resolution Quasi-Judicial Old Business New Business

FY2011 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC

SUBJECT TITLE: Resolution 2011-44 Awarding a Contract to C.A.P. Government, Inc. to Provide Building Plans Review and Inspection Services

EXPLANATION: At the January 29, 2010 meeting, the Commission selected C.A.P. Government, Inc. (CAP) as the first ranked proposer to provide building plans review and inspection services and authorized the Town Manager to negotiate a contract.

The negotiations have concluded and the agreement, which is **Exhibit A** to the attached Resolution (**Exhibit 1**), is ready for Commission consideration.

The agreement incorporates the conditions of the Town's RFP and the CAP proposal. In summary, the agreement is for three years with an option for the Town to exercise two, one-year extensions. CAP receives 75% of the permit revenue with the other 25% remaining with the Town to cover our expenses.

There is a separate agenda item on tonight's meeting adopting the building permit fee schedule on which the CAP proposal was predicated.

The agreement provides for CAP to start providing services on Tuesday, January 3, 2012. Broward County has been advised and we are working through the transition issues.

RECOMMENDATION: We recommend the approval of the attached Resolution 2011-44 and the agreement.

EXHIBIT 1 - Resolution 2011-44 and Exhibit A, which is the CAP Agreement

Reviewed by Town Attorney
 Yes No

Town Manager Initials CB

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RESOLUTION 2011-44

A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AUTHORIZING AN AGREEMENT WITH C.A.P. GOVERNMENT, INC. FOR BUILDING INSPECTION AND PLAN REVIEW SERVICES; DIRECTING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE THE AGREEMENT; PROVIDING FOR REPEAL OF ANY CONFLICTING RESOLUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

14 **WHEREAS**, the Town of Lauderdale-By-The-sea finds it in the best interest of the Town
15 to continue outsourcing building inspection and plan review services in the Town; and

16 **WHEREAS**, the Town advertised Request for Proposal No. 12-10-01 on October 26,
17 2011; and

18 **WHEREAS**, the Town Commission concurred with staff's recommendation to negotiate
19 a contract with C.A.P. Government, Inc. for building inspection and plan review services; and

20 **WHEREAS**, the Town Commission wishes to memorialize and approve the agreement
21 with C.A.P. Government, Inc. for these services.

22 **NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF**
23 **THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:**

24 **Section 1.** Each "WHEREAS" clause set forth is true and correct and herein
25 incorporated by this reference.

26 **Section 2.** The Town Manager is hereby authorized to execute, on behalf of the
27 Town, the Agreement with C.A.P. Government, Inc in the form attached hereto as Exhibit "A",
28 with such non-material changes as may be approved by the Town Manager and Town Attorney,
29 and such other documents necessary to implement the terms of the Agreement.

1 **Section 3.** The Town Manager and/or her designee and the Town Attorney are authorized
2 to take all actions necessary to implement the terms and conditions of the Agreement.

3 **Section 4.** All resolutions or parts of resolutions in conflict herewith are hereby repealed
4 to the extent of such conflict.

5 **Section 5.** If any clause, section or other part of this resolution shall be held by any
6 court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid
7 part shall be considered as eliminated and in no way affecting the validity of the other provisions
8 of this resolution.

9 **Section 6.** This resolution shall become effective immediately upon its passage.

10 **PASSED AND ADOPTED** this _____ day of December, 2011.

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Mayor Roseann Minnet

Attest:

June White, CMC, Town Clerk
(CORPORATE SEAL)

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

AGREEMENT BETWEEN
THE TOWN OF LAUDERDALE-BY-THE-SEA
AND
C.A.P. GOVERNMENT, INC.
FOR
BUILDING PLANS REVIEW AND INSPECTION SERVICES

RFP No. 12-10-01

This Agreement is made and entered into the _____ day of _____, 2011 by and between the Town of Lauderdale-By-The-Sea, a Florida municipal corporation, ("**TOWN**"), and C.A.P. Government, Inc. ("**CONTRACTOR**") for Plan Review and Inspection Services ("**Agreement**"). References in this Agreement to "Town Manager" shall include the Town Manager of the TOWN or her designee.

WITNESSETH:

WHEREAS, the TOWN released Request for Proposals No. 12-10-01 for Building Plans Review and Inspection Services; and

WHEREAS, on November 29, 2011, the Town Commission concurred with staff's recommendation and directed staff to negotiate a contract with CONTRACTOR; and

WHEREAS, TOWN and CONTRACTOR desire to enter into this Agreement whereby the duties and obligations each to the other are set forth.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREIN EXPRESSED AND THE FAITHFUL PERFORMANCE OF ALL SUCH COVENANTS AND CONDITIONS, TOWN AND CONTRACTOR AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES

- 1.1 The CONTRACTOR shall meet the requirements and perform the services described herein and in the manner and as described in the Request for Proposals for Plan Review and Inspection Services, RFP No. 12-10-01 (the "**RFP**"), attached hereto and incorporated herein as **Exhibit "A"** and the CONTRACTOR'S Proposal, attached hereto and incorporated herein as **Exhibit "B"**. The scope of services required by Exhibit "A", Exhibit "B" and this Agreement shall be referred to as "Services".
- 1.2 CONTRACTOR agrees and acknowledges that CONTRACTOR did not take any exceptions to the RFP and is prohibited from exempting any provision of the RFP or of

Exhibit "A" to Resolution 2011-44

Building Plans Review and Inspection Services

this Agreement in any of CONTRACTOR'S Services pursuant to this Agreement. The provisions and requirements of **Exhibit "A"** are hereby ratified and confirmed and are incorporated herein by this reference. CONTRACTOR shall comply with each and every provision of the RFP.

- 1.3 CONTRACTOR shall provide zoning inspections and zoning plan review as requested by TOWN. Compensation for this task is included in Section 3.1 hereof.
- 1.4 If requested by Town Manager, CONTRACTOR shall render additional plans review or inspection services, such as, but not limited to:
 - A. The completion of the review and inspection of projects previously handled by Broward County on behalf of the TOWN;
 - B. After-hours emergency response for life-safety issues;
 - C. permit review and inspections when the TOWN has waived the permit fees; or
 - D. Comprehensive emergency management response.

Any such additional work shall be performed at the hourly rate set forth in the schedule of fees included in **Exhibit "B"**.

SECTION 2. TERM

- 2.1 The term of this Agreement is three years, which shall begin on January 3, 2012, and shall extend until December 31, 2014 ("**Term**") unless this Agreement is terminated earlier in accordance with the terms of this Agreement.
- 2.2 At the end of the Term, the TOWN shall have the option to renew this Agreement for two (2) periods of one year each ("**Renewal Term**"). This provision in no way limits either party's right to terminate this Agreement at any time during the Term or any Renewal Term, pursuant to Section 4 of the Agreement.
 - 2.2.1 Each Renewal Term shall be upon the same terms, covenants and conditions as in this Agreement, except that there will be no further privilege of extension for the Term of this Agreement beyond the period referred to above.
 - 2.2.2 TOWN shall exercise its right to an extension of the Term of this Agreement by notifying CONTRACTOR in writing by certified mail, return receipt requested or by hand delivery, of its election to exercise its option to renew this Agreement. Said notice shall be provided not later than sixty (60) days prior to the expiration of the Term, or any Renewal Term.
- 2.3 On December 14, 2011, TOWN and CONTRACTOR shall develop and implement a transition plan, which shall include, at a minimum the elements set forth below.
 - 2.3.1 CONTRACTOR shall coordinate with the TOWN'S Development Services Director and TOWN'S administrative staff on a day-to-day basis to become familiar with the current working environment and with the customers. CONTRACTOR shall also become familiar with TOWN operations, including, by example and not limitation, computers, hardware, software, and office equipment.

Exhibit "A" to Resolution 2011-44

Building Plans Review and Inspection Services

- 2.3.2** All TOWN permits opened by Broward County shall be completed by Broward County. Should Broward County decline to complete the processing for these permits, the CONTRACTOR shall perform all necessary services for processing the permits and invoice TOWN at the hourly rates set forth in **Exhibit "B"**.
- 2.3.3** CONTRACTOR shall begin to process all permits no later than January 3, 2012.

SECTION 3. COMPENSATION

- 3.1** CONTRACTOR shall be compensated for its Services by receiving seventy-five (75%) percent of actual revenue received by TOWN for permit applications (net of refunds) according to the TOWN'S records.
- 3.2** TOWN shall pay CONTRACTOR monthly in accordance with the Florida Prompt Payment Act; however, payment may be withheld by the Town Manager, for failure of CONTRACTOR to comply with a term, condition or requirement of this Agreement.
- 3.3** Notwithstanding any provision of this Agreement to the contrary, Town Manager may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work of CONTRACTOR that has not been remedied or resolved in a manner satisfactory to Town Manager. The amount withheld shall not be subject to payment of interest by TOWN.
- 3.4** Payment shall be made to CONTRACTOR at:
- C.A.P. Government, Inc.
Attention: Carlos A. Penin, P.E., President
8350 NW 52nd Terrace, Suite 209
Doral, Florida 33166
- or by Electronic Funds Transfer (EFT) as determined by the TOWN.
- 3.5** CONTRACTOR agrees to keep such records and accounts as may be necessary, for such time period as required by Florida Statutes, in order to record complete and correct entries as to personnel hours charged for which CONTRACTOR receives reimbursement. Such books and records shall be available at reasonable times for examination and audit by TOWN.
- 3.6** The TOWN shall adopt a permit fee schedule by Resolution, which shall be determined by TOWN in its sole discretion and may be changed by TOWN from time to time at TOWN'S discretion.
- 3.7** Upon termination of this Agreement, CONTRACTOR shall refund to TOWN all permit fees not previously remitted to TOWN in accord with this Agreement.

SECTION 4. TERMINATION

- 4.1** This Agreement may be terminated for cause by TOWN or the CONTRACTOR if a breach has not corrected within ninety (90) days after written notice from the other party.

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Termination of this Agreement for cause shall include but not be limited to, failure to suitably perform the services, failure to continuously perform the services in a manner calculated to meet or accomplish the objectives of TOWN as set forth in this Agreement or multiple breach of the provisions of this Agreement notwithstanding whether any such breach was previously waived or cured.

- 4.2 This Agreement may be terminated for convenience of the TOWN upon not less than one hundred and twenty (120) days' written notice by TOWN to the CONTRACTOR.

In the event this Agreement is terminated for convenience, CONTRACTOR shall be paid for any services performed to the date the Agreement is terminated; however, upon being notified of TOWN'S election to terminate, CONTRACTOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement unless specifically requested by TOWN. CONTRACTOR acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by TOWN, the adequacy of which is hereby acknowledged by CONTRACTOR, is given as specific consideration to CONTRACTOR for TOWN'S right to terminate this Agreement for convenience.

- 4.3 This Agreement may be terminated by the Town Manager upon such notice as the Town Manager deems appropriate in the event Town Manager determines that termination is necessary to protect the public health, safety, or welfare.
- 4.4 Notice of termination shall be provided in accordance with the "NOTICES" Section of this Agreement except that notice of termination by Town Manager 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.
- 4.5 In the event this Agreement is terminated, any compensation payable to CONTRACTOR shall be withheld until all documents are provided to TOWN pursuant to Section 7.2 of this Agreement. In no event shall the TOWN be liable to CONTRACTOR for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

SECTION 5. INDEMNIFICATION

- 5.1 CONTRACTOR shall at all times indemnify, and hold harmless and defend, the TOWN of and from any and all fines, suits, claims, demands, penalties, losses and actions (including attorney's fees and costs), including but not limited to, any injury to persons or damage to or loss of property caused by CONTRACTOR or its agents, employees or subcontractors, in the performance of this Agreement or in any way arising from this Agreement, whether such is caused by such person's negligence, gross negligence, willful misconduct, or breach of this Agreement, including, without limitation, such person's actions, in connection with providing the Services hereunder, or failure to provide such Services, to the extent permitted by applicable law. This covenant shall survive the expiration or earlier termination of this Agreement. The provisions of this indemnity shall survive the expiration or termination of this Agreement.
- 5.2 To the extent considered necessary by the Town Manager and the Town Attorney, any sums due CONTRACTOR under this Agreement may be retained by TOWN until all of

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Building Plans Review and Inspection Services

TOWN'S claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by TOWN.

- 5.3 In any and all claims against the TOWN, or any of their agents or employee's by any employee of the CONTRACTOR, any sub-contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR, or any sub-contractor under Worker's Compensations Acts, Disability Benefit Acts or other Employee Benefits Acts. Nothing in this section shall affect the immunities of the TOWN pursuant to Chapter 768, Florida Statutes.

SECTION 6. INSURANCE

Throughout the term of this Agreement, CONTRACTOR shall maintain insurance in the type and amounts and pursuant to the requirements set forth below. The underwriter of such insurance shall be qualified to do business in Florida and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the CONTRACTOR, its officials, employees, agents and volunteers. Any insurance maintained by the TOWN shall be in excess of the CONTRACTOR'S insurance and shall not contribute to the CONTRACTOR'S insurance. The insurance coverage shall include a minimum of:

- 6.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for statutory limits as required by applicable State and Federal laws.
- 6.2 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the TOWN and the CONTRACTOR against claims for injuries to members of the public and/or damages to property of others arising from the CONTRACTOR'S use of motor vehicles or any other equipment and shall cover operations with respect to onsite and offsite operations. Insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000.00 per occurrence for Bodily Injury and Property Damage and for Hired & Non Owned Auto Liability.
- 6.3 **Comprehensive General Liability.** This insurance shall be written in comprehensive form and shall protect the TOWN and the CONTRACTOR against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the CONTRACTOR or any of its agents, employees, or subcontractors. The limit of liability shall not be less than combined single limit of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate for Bodily Injury and Property Damage. Comprehensive General Liability insurance shall include endorsements for property damage; personal injury; contractual liability; completed operations; products liability and independent contractors' coverage.
- (a) The TOWN is to be specifically included as an additional insured for the liability of the CONTRACTOR resulting from operations performed by or on behalf of TOWN in performance of this Agreement. CONTRACTOR'S insurance, including that applicable

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to the TOWN as an additional insured, shall apply on a primary basis and any other insurance maintained by the TOWN shall be in excess of and shall not contribute to CONTRACTOR'S insurance. CONTRACTOR'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each insured or additional insured in the same manner as if separate policies had been issued to each.

- 6.4 **Professional Liability (Errors & Omissions):** \$2,000,000.00 policy to be written on a claims made basis.
- 6.5 **Certificate of Insurance:** Prior to the execution of this Agreement, CONTRACTOR shall provide the TOWN Manager with evidence of insurability from the CONTRACTOR'S insurance carrier or a Certificate of Insurance. Prior to commencement of any Services hereunder, CONTRACTOR shall provide to the TOWN Manager, Certificates of Insurance evidencing the required insurance coverage's. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall specifically Name the TOWN as additionally insured. The TOWN reserves the right to require the CONTRACTOR to provide endorsements or a certified copy of such policies, upon written request by the TOWN. If a policy is due to expire prior to the completion of the Services hereunder, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the CONTRACTOR and the TOWN before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the TOWN Manager.
- 6.6 All deductibles or self-insured retentions must be declared to and be approved by the TOWN Manager. The CONTRACTOR shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The TOWN Manager may require the CONTRACTOR, at any time subsequent to the execution of this Agreement, to provide a bond or other monetary consideration to cover the CONTRACTORS' deductible for Professional Liability Insurance.

SECTION 7. MISCELLANEOUS

- 7.1 **Ownership of Documents.** Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of TOWN. Upon termination of this Agreement, any reports, photographs, surveys and other data and documents prepared by CONTRACTOR, whether finished or unfinished, shall become the property of TOWN and shall be delivered by CONTRACTOR to the Town Manager within seven (7) days of termination of this Agreement or on the date agreed to by the parties. Any compensation due to CONTRACTOR shall be withheld until all documents are received as provided herein.
- 7.2 **Audit and Inspection Rights and Retention of Records.** TOWN shall have the right to audit the books, records and accounts of CONTRACTOR that are related to this Agreement. CONTRACTOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.

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CONTRACTOR shall preserve and make available, at reasonable times for examination and audit by TOWN, 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, unless CONTRACTOR is notified in writing by TOWN of the need to extend the retention period. Such retention of such records and documents shall be at CONTRACTOR'S expense. 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.

The CONTRACTOR understands that the public shall have access at all reasonable times to all documents and information pertaining to TOWN contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the TOWN and the public to all documents subject to disclosure under all applicable law.

When the Florida Public Records Act is applicable to CONTRACTOR'S records, CONTRACTOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for TOWN'S disallowance and recovery of any payment upon such entry.

In addition, CONTRACTOR shall respond to the reasonable inquiries of successor CONTRACTORS and allow successor CONTRACTORS to receive working papers relating to matters of continuing significance.

In addition, CONTRACTOR shall provide a complete copy of all working papers to the TOWN, prior to final payment by the TOWN, in accordance with the RFP for CONTRACTOR services.

7.3 Policy of Non Discrimination. CONTRACTOR shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. CONTRACTOR shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

7.4 Public Entity Crime Act. CONTRACTOR 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 TOWN, may not submit a bid on a contract with TOWN for the construction or repair of a public building or public work, may not submit bids on leases of real property to TOWN, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with TOWN, and may not transact any business with TOWN in excess of the threshold amount provided in Section 287.017,

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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 hereto, and may result in debarment from TOWN'S competitive procurement activities. In addition to the foregoing, CONTRACTOR 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 CONTRACTOR has been placed on the convicted vendor list.

- 7.5 Independent Contractor.** CONTRACTOR is an independent contractor under this Agreement. Services provided by CONTRACTOR pursuant to this Agreement shall be subject to the supervision of CONTRACTOR. In providing such services, neither CONTRACTOR nor its agents shall act as officers, employees or agents of the TOWN. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR. This Agreement shall not constitute or make the parties a partnership or joint venture.
- 7.6 Third Party Beneficiaries.** Neither CONTRACTOR nor TOWN intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them. Based upon this Agreement the parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 7.7 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 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 CONTRACTOR: Carlos A. Penin, P.E., President
C.A.P. Government, Inc.
8350 NW 52nd Terrace, Suite 209
Doral, Florida 33166

FOR TOWN: Town Manager
4501 N. Ocean Drive
Lauderdale-By-The-Sea, FL 33308

Copy To: Town Attorney
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, Florida 33308
Phone: (954) 640-4200
Fax: (954) 776-1857

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Any party hereto may change the address to which notices shall be directed under this Section by giving ten (10) days written notice of such change to the other party.

- 7.8 Assignment and Performance.** Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by CONTRACTOR, without the consent of TOWN, which consent may be withheld or conditioned in the sole and absolute discretion of TOWN. In addition, CONTRACTOR shall not subcontract any portion of the work required by this Agreement, except with the prior approval of the Town Manager, which shall be in his sole and absolute discretion. A list of all such subcontractors shall be included in the Proposal. If additional subcontractors are to be used during the term of this Agreement, other than those submitted in the Proposal, a list of such subcontractors shall be provided to the Town Manager, which shall be subject to her written approval.

7.8.1 CONTRACTOR represents that all persons delivering the Services have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and Services and to provide and perform such Services to TOWN'S satisfaction for the agreed compensation.

7.8.2 CONTRACTOR shall perform its duties, obligations and Services under this Agreement in a skillful and respectable manner.

7.8.3 In the event that the Town Manager becomes dissatisfied with the performance of any personnel, which includes employees, independent contractors, or subcontractors, performing services under this Agreement for any reason, the Town Manager shall provide written notification to CONTRACTOR. Upon receipt of such notification, CONTRACTOR shall transfer such person out of TOWN service within three (3) days. TOWN retains the right to immediately request a transfer if, in the sole opinion of the TOWN, the person in question is a danger to the health, safety and welfare of the workplace.

- 7.9 Conflicts.** Neither CONTRACTOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONTRACTOR'S loyal and conscientious exercise of judgment related to its performance under this Agreement.

CONTRACTOR agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against TOWN in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, CONTRACTOR agrees that 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 TOWN in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude CONTRACTOR or any other persons from representing themselves in any action or in any administrative or legal proceeding.

In the event CONTRACTOR is permitted to utilize subcontractors to perform any services required by this Agreement, CONTRACTOR agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

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Building Plans Review and Inspection Services

CONTRACTOR shall not give, solicit for, deliver or provide a campaign contribution directly or indirectly to a candidate or to the campaign committee of a candidate for the offices of Mayor or Commissioner during the term of this Agreement. CONTRACTOR shall not give gifts to the Mayor or to any Town Commissioner during the term of this Agreement and CONTRACTOR shall in all respects comply with the Broward County Code of Ethics as it applies to municipalities.

No officer or employee of the TOWN, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

- 7.10 Contingency Fee.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, TOWN shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- 7.11 Materiality and Waiver of Breach.** TOWN and CONTRACTOR agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. TOWN'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.
- 7.12 Compliance with Laws.** CONTRACTOR shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.
- 7.13 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 TOWN or CONTRACTOR elect to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
- 7.14 Joint Preparation.** The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and 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.
- 7.15 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 this Agreement, the text of this

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Agreement shall prevail and be given effect. Next in priority shall be the RFP and last in priority shall be CONTRACTOR'S proposal, attached hereto as "Exhibit B".

- 7.16 Amendments.** 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.
- 7.17 Prior Agreements.** This Agreement and its attachments constitute the entire agreement between CONTRACTOR and TOWN, and this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained here shall be effective unless set forth in writing in accordance with SECTION 7.16 above.
- 7.18 Drug-Free Workplace.** CONTRACTOR shall maintain a drug-free workplace.
- 7.19 Incorporation by Reference.** The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits are incorporated hereto and made a part of this Agreement.
- 7.20 Multiple Originals.** This Agreement may be fully executed in two (2) copies by all parties each of which, bearing original signatures, shall have the force and effect of an original document.
- 7.21 Headings.** Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.
- 7.22 Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
- 7.23 Public Records.** CONTRACTOR understands that the public shall have access, at all reasonable times, to all documents and information pertaining to TOWN contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the TOWN and the public to all documents subject to disclosures under applicable law. CONTRACTOR'S failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by the TOWN.
- 7.24 Survival of Provisions.** Any terms or conditions of this Agreement that require acts beyond the date of its termination shall survive the termination of this Agreement, shall remain in full force and effect unless and until the terms of conditions are completed, and shall be fully enforceable by either party.
- 7.25 Truth-in-Negotiation Certificate.** Signature of this Agreement by CONTRACTOR shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

Exhibit "A" to Resolution 2011-44

Building Plans Review and Inspection Services

SIGNATURES APPEAR ON FOLLOWING PAGE

TOWN:

CONTRACTOR:

TOWN OF LAUDERDALE-BY-THE-SEA

C.A.P. GOVERNMENT, INC.

By: _____
Constance Hoffmann, Town Manager

By: _____
Carlos A. Penin, P.E., President

Attest: _____
June White, CMC, Town Clerk

Approved as to Form and Legal Sufficiency:

Town Attorney

Building Plans Review and Inspection Services

TOWN:

TOWN OF LAUDERDALE-BY-THE-SEA

By: _____
Constance Hoffmann, Town Manager

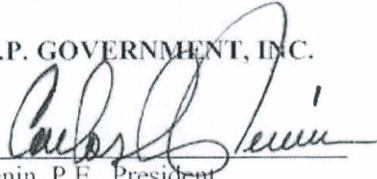
Attest: _____
June White, CMC, Town Clerk

Approved as to Form and Legal Sufficiency:

Town Attorney

CONTRACTOR:

C.A.P. GOVERNMENT, INC.

By: 
Carlos A. Penin, P.E., President