

SERVICE CONTRACT

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by the City of Pompano Beach, a Florida municipal corporation (“City”) and Calvin Giordano & Associates, Inc., a Florida for-profit corporation (“CGA”).

WHEREAS, pursuant to an Agreement For Code Compliance Services between the parties approved by City Ordinance 2011-7 and four Amendments thereto (the “Original Agreement”), CGA has been providing professional turnkey Code Compliance services as well as administrative and support staff for the City’s Special Magistrate since October 28, 2010; and

WHEREAS, the term of the Original Agreement is set to expire and City has determined it is in the best interest of the public for CGA to continue to provide the foregoing comprehensive Code Compliance services on behalf of the City; and

WHEREAS, the parties desire to enter into this Agreement to set forth the terms and conditions upon which Code Compliance services will be provided.

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

ARTICLE 1 CONTRACT DOCUMENTS

This Agreement consists of the provisions contained herein along with Exhibit “A” - “*Scope of Work*”; Exhibit “B” - “*Asset Master List*”; Exhibit “C” - “*Insurance*”; and Exhibit “D” - “*Recordkeeping, Inspection and Audit Procedures*” attached hereto and made a part hereof, and all subsequent written amendments executed hereto with the same formality of this Agreement.

ARTICLE 2 RESPONSIBILITIES AND REPRESENTATIONS OF CGA

CGA shall conduct and manage all aspects of the day-to-day operations of the City’s Code Compliance Department and Office of the Special Magistrate as further described in this Article and Exhibit “A” attached hereto and made a part hereof (collectively the “Work”), including but not limited to, all transition; planning; organizing; communications; administration; staffing; field enforcement; customer service and public education. For the purposes of this Agreement, “transition” shall include CGA’s continued prosecution of all open Code Compliance cases existing prior to the Term of this Agreement.

In addition, CGA shall develop and adhere to written protocols to ensure the Work is performed in a professional manner that protects and furthers City interests and the public good, including maintaining the integrity of all records, communications and legal documents utilized or issued pursuant to the Work.

As part of the Work required hereunder, CGA shall:

(1) Maintain a cooperative, professional and good faith attitude in all relations on behalf of the City to ensure a strong local presence and foster a public image of mutual benefit to both parties which includes not making any statements or taking any actions detrimental to this effort;

(2) Give prompt written notice to the City whenever CGA observes or otherwise becomes aware of any issue that affects the scope or timing of CGA's Work hereunder;

(3) At reasonable times and with reasonable notice, meet with and coordinate its enforcement and public outreach efforts with representatives of the City, the Pompano Beach Community Redevelopment Agency (CRA), Broward Sheriff's Office, the citizenry and other parties attendant to CGA's Work hereunder; and

(4) Be bound by and comply with the security policies of the City's Information Technologies Department as amended from time to time.

CGA represents and warrants that:

(1) CGA is a valid Florida corporation in good standing with the State and its execution of, and performance under, this Agreement will not violate or cause CGA to be in default of any provisions of its governing documents, rules or regulations or any other agreement to which CGA is a party;

(2) CGA has the professional ability, skill and resources to complete to perform the Work;

(3) CGA is knowledgeable regarding all applicable federal, state and local laws, ordinances and regulations pertaining to the Work, including, but not limited to, Chapter 162, Florida Statutes and the Americans with Disabilities Act (ADA) and that it has, and will continue to maintain, all licenses, approvals and certificates of competency required for its performance hereunder;

(4) If any of the licenses CGA is required to have for the Work are revoked, suspended or threatened to be in jeopardy, CGA shall immediately provide City notice of same pursuant to Article 8 herein;

(5) The City shall be entitled to rely upon the accuracy and completeness of any information, reports, documentation, service or Work supplied by CGA or its authorized agents, the latter of whom shall be responsible for full performance of all covenants herein on CGA's part;

(6) There are no actions, suits or proceedings pending or threatened against or affecting CGA or its principals which CGA is aware of in any Court or before or by any federal, state, county, municipal or other governmental entity which would have a material effect on CGA's ability to perform its obligations under this Agreement and, if such an action arises, CGA shall immediately provide City notice of same pursuant to Article 8 herein;

(7) CGA shall perform the Work in accordance with the community standards, compliance philosophy and priorities established by City and tailored to City's discretion;

(8) The eleven (11) vehicles the City provides CGA constitute in-kind consideration and shall be used solely in performance of the Work and at all times remain within City boundaries pursuant to tracking equipment provided and monitored by CGA at its expense;

(9) CGA shall comply with all existing and future internal controls established by City to ensure appropriate use and preservation of the vehicles and fuel City provides for the Work,

including, but not limited to, vehicles shall only be driven within City boundaries, parked overnight at City Hall and subject to the City's annual inspection policies;

(10) Upon the expiration or termination of this Agreement, whichever occurs first, all vehicles City supplied CGA for the Work shall be returned to City free and clear of all liens in good working condition, reasonable wear and tear excepted;

(11) CGA's staff shall routinely consult with and assist the City's legal staff and other representatives to facilitate and ensure effective enforcement efforts, particularly in matters where parties are represented by legal counsel; and

(12) CGA shall assign high priority to training, professional development and instilling exemplary customer service skills in its employees performing the Work hereunder with the goal of gaining compliance, ensuring the interests of the City and public are served at a high level, and citizens are treated with respect and professionalism.

ARTICLE 3 CITY RESPONSIBILITIES AND IN-KIND CONSIDERATION

The City shall:

(1) Provide CGA access to all information in its possession pertinent to the Work required under this Agreement, including, but not limited to, previous reports, maps, building and sign permits, plans, occupational license records, and all other relevant data;

(2) Give CGA prompt written notice whenever the City observes or otherwise becomes aware of any development that affects the scope or timing of CGA's Work;

(3) Provide and maintain office space, including equipment, furniture, utilities, internet and phones for CGA in Pompano Beach City Hall to include a Code Compliance/Special Magistrate Office and a separate cubicle office as well as any other additional accommodations City deems necessary and appropriate during the Term;

(4) Provide stationary and postage for CGA's performance of the Work;

(5) Select and compensate the Special Magistrate(s) to preside over Code hearings;

(6) Provide eleven (11) vehicles for the Work to be replaced every five (5) years or 50,000 miles, whichever is first, in accordance with the schedule on the Asset Master List attached as Exhibit "B";

(7) Supply fuel, at its sole cost, for the eleven (11) vehicles it supplies CGA for the Work to be provided at the City's fuel station located at 1190 NE 3rd Avenue in Pompano Beach, Florida;

(8) Conduct and manage all revenue collection efforts associated with the Work;

(9) Provide technical support for virtual Special Magistrate hearings necessitated by the COVID-19 pandemic or at the direction of the City's Contract Administrator;

(10) Provide desk phones, phone line service and technical support for office computers, printers and phones located at City Hall and connected to the City's Network;

(11) Configure laptops and printers for compatibility with the City's Network and performance of the Work;

(12) Install and configure Microsoft Office and Windows operating system software on CGA computers;

(13) Provide Robocalling software/computer and Naviline ERP system used to track enforcement cases, including Network VPN field connectivity to City's on premise Naviline ERP system;

- (14) Timely provide CGA's Project Manager copies of all approved ordinance revisions to facilitate performance of the Work; and
- (15) Provide direction regarding legal issues associated with Work.

ARTICLE 4 TERM

This Agreement shall commence on October 28, 2020, and continue for a five (5) year Term unless otherwise amended or terminated as set forth herein.

ARTICLE 5 ANNUAL PERFORMANCE EVALUATION AND TERM RENEWAL

The City's Contract Administrator shall conduct an annual review of CGA's performance hereunder and provide a written evaluation which shall be based on the scope of services comprising the Work and provided to CGA for review and discussion as necessary.

In the event City determines CGA's performance during the first five-year Term is satisfactory, then with both parties' written consent executed with the same formality of this Agreement, City shall have the option to renew this Agreement for one (1) additional five (5) year Term provided City gives written notice of its intention to renew six (6) months prior to the end of the first Term.

ARTICLE 6 PRICE FORMULA, INVOICING, PAYMENT AND REIMBURSABLES

A. Price Formula. City agrees to pay CGA annual sum not to exceed One Million Six Hundred Twenty-Five Thousand Three Hundred and Nine dollars (\$1,625,309.00) made payable in twelve (12) monthly installments as compensation for the Work and professional staffing described in Exhibit "A". As of the date of this Agreement, the annual base contract amount is \$1,446,660 and CGA shall also be entitled to additional compensation of \$178,649 annually to provide two Code Compliance Inspector positions for enforcement of solid waste regulations.

The cost breakdown for the professional staffing CGA is obligated to provide as part of the Work is set forth below for the purpose of CGA crediting City if any of the requisite eleven (11) Code Compliance Inspector positions are not staffed for thirty (30) consecutive days in which case CGA has an affirmative obligation to provide City written notice of same pursuant to the invoicing procedures described in this Article or another mutually acceptable written procedure to be determined by the parties' Contract Administrators as defined in Article 9 herein.

\$160,000 for two (2) full-time Code Compliance Inspectors dedicated solely to enforcement of solid waste regulations

\$ 720,000 for provision of nine (9) full-time Code Compliance Inspectors, eight of which shall be assigned to a different geographical service area for enforcement of the City's Code of Ordinances, the Florida Building Code and other applicable local regulatory issues and one of which shall serve citywide to enforce Business Tax Receipts under the City's Code of Ordinances.

Commencing with the first annual anniversary of the Term and for each additional annual anniversary thereafter, the annual base contract amount shall be adjusted by positive changes from the prior year in the annual National Consumer Price Index ("CPI") for all Wage Earners & Clerical Workers, U.S. City Average (All items: 1982-84=100) issued by the U.S. Department of Labor, Bureau of Labor Statistics or any successor agency of the United States that shall issue indices or data of similar type; provided, however, that: (i) in no event shall such adjustment result in a decrease in the annual base contract amount; (ii) no such increase shall be less than one percent (1%) or more than five percent (5%) in any one (1) year. The June index or most current month shall be used to calculate the first adjustment and the same month moving forward with annual adjustments. If such index is discontinued during the Term and there is no successor index, "CPI" shall mean such other index as the Parties shall mutually agree as reasonably replacing such index.

B. Invoicing and Payment. CGA shall invoice City within the first seven days of each month for Work completed the previous month and be supported by such documentation as the City may reasonably require to track which direct/indirect costs, including professional staffing, are to be credited to or debited by City. City's monthly payments to CGA shall be made after the invoiced Work has been verified as satisfactorily completed. Unless disputed by City as provided herein, upon City's receipt of a Proper Invoice as defined in §218.72, Florida Statutes, as amended, City shall forward CGA full payment within forty five (45) days thereafter.

City may temporarily remove for review any disputed amount, by line item, from an invoice and shall timely provide CGA written notification of any such disputed charge. Within ten (10) days of receipt of City's notice of the disputed amount, CGA shall provide clarification and a satisfactory explanation to City along with revised copies of all such documents if inaccuracies or errors are discovered.

In the event City has a claim against CGA for Work performed hereunder which has not been timely remedied in accordance with the provisions of this Article, City may withhold payment for the contested amount, in whole or in part, to protect itself from loss on account of defective Work, claims filed or reasonable evidence indicating probable filing of claims by other parties against CGA or CGA's failure to make proper payments to subcontractors or vendors for material or labor. When the reason(s) for withholding payment are removed or resolved in a manner satisfactory to City, payment shall be made. The amount withheld by City shall not be subject to payment of interest by City.

Resolution of improper payment requests or invoices shall be in accordance with §218.76, Florida Statutes, as amended.

C. Reimbursables. CGA shall seek and obtain written approval from the City's Contract Administrator before incurring any costs for which it expects to be reimbursed. Reimbursable expenses shall be invoiced monthly as incurred and billed at cost. Typical reasonable "out of pocket" expenses include printing costs and marketing materials produced on behalf of the City.

D. Enforcement Fines and Costs. All revenues arising from the Code Compliance and Special Magistrate processes are, and remain, the sole property of the City.

ARTICLE 7 DISPUTES

Any factual disputes between City and the CGA in regard to this Agreement shall be directed to the City Manager for the City whose direction and decision shall be final.

ARTICLE 8 CONTRACT ADMINISTRATORS, NOTICES AND DEMANDS

A. Contract Administrators. During the term of this Agreement, the City's Contract Administrator shall be Brian Donovan and the CGA's Contract Administrator shall be Chris Giordano or their respective designee as authorized in writing.

B. Notices and Demands. A notice, demand, or other communication hereunder by either party to the other shall be effective if it is in writing and sent via email, facsimile, registered or certified mail, postage prepaid to the representatives named below or is addressed and delivered to such other authorized representative at the address as that party, from time to time may designate in writing and forward to the other as provided herein.

If to CGA: Chris Giordano, MSC, CCM
1800 Eller Drive, Suite 600
Fort Lauderdale, FL 33316
Office: (954) 921-7781
Email: cgiordano@cgasolutions.com

With a copy to: Mario Sotolongo, Project Manager
1800 Eller Drive, Suite 600
Fort Lauderdale, FL 33316
Cell: (954) 245-8944
Email: msotolongo@cgasolutions.com

If to City: Brian Donovan, Contract Administrator
100 West Atlantic Blvd., Room 430
Pompano Beach, FL 33060
Office: (954) 786-4049
Email: brian.donovan@copbfl.com

With a copy to: Antonio Pucci, Contract Manager
100 West Atlantic Blvd.
Pompano Beach, FL 33060
Phone: (954) 786-5574
Email: antonio.pucci@copbfl.com

ARTICLE 9 OWNERSHIP OF DOCUMENTS AND INFORMATION

All information, data, reports, plans, procedures or other proprietary rights in all documents and materials assembled or compiled by CGA as required for the Work hereunder, whether complete or unfinished, shall be owned by the City without restriction, reservation or limitation of their use and, provided CGA has been compensated for said Work, timely provided to City at no cost upon reasonable written request, for City's use and distribution as City deems appropriate.

Upon completion of all Work contemplated hereunder or termination of this Agreement, copies of all Work documents and materials shall be promptly delivered to the City's Contract Administrator upon written request. CGA may not disclose, use, license or sell any Work developed, created, or otherwise originated hereunder to any third party whatsoever. The rights and obligations created under this Article shall survive the termination or expiration of this Agreement.

ARTICLE 10 DEFAULT AND REMEDIES TO CURE DEFAULT.

A. Default by CGA. CGA acknowledges City is relying on CGA for the faithful performance of all undertakings and covenants contained herein and that CGA's expressed professional ability to accomplish same has served as inducement for the City to enter into this Agreement.

An event of default or breach by CGA shall include, but not be limited to, any of the following:

- (1) Failure of CGA to perform the Work at any time during the Term;
- (2) Failure of CGA to obtain the approval of the City where required hereunder;
- (3) Failure of CGA to perform any requisite covenant, condition or provision contained herein; or
- (4) CGA files for bankruptcy or is the subject of insolvency or receivership proceedings.

B. Default by City or CGA. If either party fails to perform any material covenant, agreement, undertaking or term of this Agreement, or if the parties' representations set forth herein are materially untrue or incorrect, then the party alleging default or breach shall give written notice, in which event the party alleged to be in default/breach shall proceed immediately to address the situation and have thirty (30) days cure or resolve same.

If such default or breach is not cured resolved within the foregoing thirty (30) day cure period, the party not in default may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy said default or breach, including, but not limited to, proceedings to compel specific performance; injunctive relief, termination of this Agreement, and damages for breach of contract.

However, in the event a particularly egregious default or breach poses a threat to persons or property, both parties reserve the right to require the other to take immediate or other such prudent and timely action as is necessary under the circumstances to prevent any such harm or damage from occurring.

ARTICLE 11 TERMINATION

City shall have the right to terminate this Agreement, in whole or in part, without cause upon ninety (90) days advance written notice to CGA. Such Notice of Termination may include City's proposed Transition Plan and timeline for terminating the Work, requests for certain Work product documents and materials, and other provisions regarding winding down concerns and activities.

In the event of termination, City shall compensate CGA for all authorized Work satisfactorily performed through the termination date under the payment terms set forth in Article 6 above and CGA shall deliver all Work product documents requested by City within thirty (30) days from the Notice of Termination. If any Work hereunder is in progress but not completed as of the date of the termination, then upon City's written approval, this Agreement may be extended until said Work is completed and accepted by City.

If there is any material breach or default in CGA's performance of any covenant or obligation hereunder which has not been remedied within thirty (30) days after City's written Notice of Termination, City, in its sole discretion, may terminate this Agreement immediately and CGA shall not be entitled to receive further payment for services rendered from the effective date of the Notice of Termination.

ARTICLE 12 FORCE MAJEURE

If either party is unable to perform, or delayed in their performance of any obligations hereunder due to fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, pandemic, acts of nature or any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"), such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of the Force Majeure event. In no event shall economic hardship or lack of funds be considered an event of Force Majeure.

In order to be entitled to the benefit of this Article, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail said event and diligently proceed to correct the adverse effect(s) or by the parties' mutual agreement, may reschedule performance of the Work or services to a later date. The parties agree, that to this Article, time is of the essence.

With regard to the COVID-19 pandemic or similar emergency, CGA must follow all federal, state, county and City regulations and safety guidelines, including, but not limited to, social distancing and personal protection equipment. CGA's inability or failure to follow any and all foregoing regulations or safety guidelines shall constitute grounds for City's immediate unilateral termination of this Agreement upon written notice to CGA's Contract Administrator which may be provided via email and subsequently confirmed via certified mail.

ARTICLE 13 INSURANCE

CGA shall maintain insurance in accordance with Exhibit “C” throughout the Term of this Agreement.

ARTICLE 14 INDEMNIFICATION

Except as expressly provided in this Agreement, no liability shall attach to the City by reason of entering into this Agreement.

A. CGA shall at all times indemnify, hold harmless and defend the City, its officers, officials, employees, volunteers and other authorized agents from and against any and all claims, demands, suit, damages, attorneys’ fees, fines, losses, penalties, defense costs or liabilities suffered by the City arising directly or indirectly from any act, breach, omission, negligence, recklessness or misconduct of CGA and/or any of its agents, officers, or employees hereunder, including any inaccuracy in or breach of any of the representations, warranties or covenants made by CGA, its agents, officers and/or employees, in performance of the Work.

CGA agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and to bear all other costs and expenses related thereto, even if the claim(s) is/are groundless, false or fraudulent. To the extent considered necessary by City, any sums due CGA hereunder may be retained by City until all of City’s claims for indemnification hereunder have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.

For Professional Liability claims, CGA agrees this indemnification and hold harmless section of the Agreement shall survive the termination or expiration of this Agreement for a period of four (4) years, unless sooner terminated by the applicable statute of limitations. For General Liability claims, CGA agrees this indemnification and hold harmless section of the Agreement shall survive the termination or expiration of this Agreement for a period of two (2) years, unless sooner terminated by the applicable statute of limitations.

CGA acknowledges and agrees that City would not enter into this Agreement without this indemnification of the City by CGA, and that the City’s entering into this Agreement shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of this Agreement.

B. CGA acknowledges and agrees that City would not enter into this Agreement without CGA’s indemnification of the City. The parties agree that one percent (1%) of the total compensation paid to CGA hereunder shall constitute specific consideration to CGA for the indemnification provided under this Article and these provisions shall survive expiration or early termination of this Agreement.

ARTICLE 15 SOVEREIGN IMMUNITY

Nothing in this Agreement shall be construed to waive or affect in any way the City's rights, privileges and immunities as set forth in § 768.28, Florida Statutes

ARTICLE 16 NON-ASSIGNABILITY AND SUBCONTRACTING.

Nothing herein shall be construed to create any personal liability on the part of any City officer or agent that may be a party hereto, nor shall it be construed as granting any rights or benefits hereunder to anyone other than the City and CGA.

A. Non-Assignability. This Agreement is not assignable and CGA agrees it shall not assign, transfer, merge or otherwise convey any of its interests, rights or obligations hereunder, in whole or in part, to any other person or entity without City's prior written consent which must be sought in writing not less than ninety (90) days prior to the date of any proposed assignment. Any attempt by CGA to assign or transfer any of its rights or obligations hereunder without first obtaining City's written approval shall not be binding on City and, at City's sole discretion, may result in City's immediate termination of this Agreement whereby City shall be released of any of its obligations hereunder. In addition, this Agreement and the rights and obligations herein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership. In the event of CGA's insolvency or bankruptcy, City may, at its option, terminate and cancel this Agreement without any notice of any kind whatsoever, in which event all rights of CGA hereunder shall immediately cease and terminate.

B. Subcontracting. Prior to subcontracting for Work to be performed hereunder, CGA shall be required to obtain the written approval of the City's Contract Administrator. If the City's Contract Administrator, in his/her sole discretion, objects to the proposed subcontractor, CGA shall be prohibited from allowing that subcontractor to provide any Work hereunder. Although CGA may subcontract Work in accordance with this Article, CGA remains responsible for any and all contractual obligations hereunder and shall also be responsible to ensure that none of its proposed subcontractors are listed on the *Convicted Vendors List* referenced in accordance with the provisions of Article 27 below.

ARTICLE 17 RECORDKEEPING, INSPECTION AND AUDIT PROCEDURES

CGA shall use such accounting methods and procedures as may be prescribed by City, in accordance with generally accepted accounting principles, which shall include but not be limited to, those methods and procedures set forth herein as well as Exhibit "D" attached hereto and made a part hereof.

ARTICLE 18 ADHERENCE TO LAW

Both parties shall adhere to all applicable laws governing their relationship with their employees including, but not limited to, laws, rules, regulations and policies concerning worker's compensation, unemployment compensation and minimum wage requirements.

ARTICLE 19 INDEPENDENT CONTRACTOR

Nothing in this Agreement shall be construed to create a partnership or joint venture between the City and CGA. It is expressly agreed that in performance of the Work, CGA, its employees and contractors/subcontractors and the employees thereof, is and shall be an independent contractor and shall not in any manner be deemed to be an employee, principal or agent of the City. As such, the employees of the CGA, its contractors/subcontractors and their employees, shall not be subject to any withholding for tax, social security or other purposes by City, nor shall such contractor, subcontractor or employee be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation or the like from City.

All persons engaged in any service or activity as Work hereunder shall at all times and in all places be subject to CGA's sole direction, supervision and control. CGA acknowledges that it shall have no authority to bind either City to any contractual or other obligation whatsoever.

ARTICLE 20 PUBLIC RECORDS

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. CGA shall comply with Florida's Public Records Law, as amended. Specifically, CGA shall:

(1) Keep and maintain public records required by the City in order to perform the service.

(2) Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CGA does not transfer the records to the City.

(4) Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the CGA, or keep and maintain public records required by the City to perform the service. If the CGA transfers all public records to the City upon completion of the contract, the CGA shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CGA keeps and maintains public records upon completion of the contract, the CGA shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the

City's custodian of public records in a format that is compatible with the information technology systems of the City.

B. Failure of the CGA to provide the above described public records to the City within a reasonable time may subject CGA to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE CGA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CGA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CITY CLERK

**100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

ARTICLE 21 GOVERNING LAW

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

ARTICLE 22 WAIVER AND MODIFICATION

A. No waiver made by either party with respect to performance, manner, time or any obligation or condition hereunder shall be considered a waiver of that party's rights with respect to the particular obligation or condition beyond those expressly waived in writing or a waiver of any other rights of the party making the waiver or any other obligations of the other party.

B. No Waiver by Delay. The City shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Agreement provided that any delay by City in asserting its rights hereunder shall not operate as a waiver of such rights or limit them

in any way. The intent of this provision is that City shall not be constrained to exercise such remedy at a time when it may still hope to otherwise resolve the problem nor shall any waiver made by City with respect to any specific default by CGA be considered a waiver of City's rights with respect to that default or any other default by CGA.

C. Modification. Either party may request changes to modify certain provisions of this Agreement; however, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

ARTICLE 23 NO CONTINGENT FEE

CGA warrants that other than a bona fide employee working solely for CGA, CGA has not employed or retained any person or entity, or paid or agreed to pay any person or entity, any fee, commission, gift or any other consideration to solicit or secure this Agreement or contingent upon or resulting from the award or making of this Agreement. In the event of CGA's breach or violation of this provision, City shall have the right to terminate this Agreement without liability and, at City's sole discretion, to deduct from the Price Formula set forth in Article 6 or otherwise recover the full amount of such fee, commission, gift or other consideration.

ARTICLE 24 ATTORNEYS' FEES AND COSTS

In the event of any litigation involving the provisions of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party, reasonable attorney and paraprofessional fees as well as all out-of-pocket costs and expenses incurred in such litigation through all appellate levels.

ARTICLE 25 EQUAL OPPORTUNITY EMPLOYMENT

CGA agrees not to discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

ARTICLE 26 NO THIRD PARTY BENEFICIARIES

CGA and City agree that this Agreement and other agreements pertaining to CGA's performance hereunder shall not create any obligation on CGA or City's part to third parties. No person not a party to this Agreement shall be a third-party beneficiary or acquire any rights hereunder and nothing herein shall be construed as consent from either party to be sued by third parties.

ARTICLE 27
PUBLIC ENTITY CRIMES ACT

As of the full execution of this Agreement, CGA certifies that in accordance with §287.133, Florida Statutes, it is not on the *Convicted Vendors List* maintained by the State of Florida, Department of General Services. If CGA is subsequently listed on the *Convicted Vendors List* during the term of this Agreement, CGA agrees it shall immediately provide City written notice of such designation in accordance with Article 8 above.

ARTICLE 28
COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy, email or facsimile copy of this Agreement and any signatory hereon shall be considered for all purposes as original.

ARTICLE 29
APPROVALS

Whenever City approval(s) shall be required for any action hereunder, said approval(s) shall not be unreasonably withheld.

ARTICLE 30
ABSENCE OF CONFLICTS OF INTEREST

Both parties represent they presently have no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with their performance under this Agreement and that no person having any conflicting interest shall be employed or engaged by either party in their performance hereunder.

CGA shall timely notify City in writing of all potential conflicts of interest for any prospective business association, interest or other circumstance that may influence or appear to influence CGA's judgment or quality of Work hereunder. Said notification shall identify the prospective business interest or circumstance and the nature of work that CGA intends to undertake and shall request the City's opinion as to whether such association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by CGA.

ARTICLE 31
DRUG-FREE WORKPLACE

CGA shall maintain a Drug-Free Workplace in accordance with § 112.0455, Florida Statutes.

ARTICLE 32
HIRING OF CGA EMPLOYEES

City agrees it shall not hire any employee of CGA doing Work hereunder for at least 180 days after that employee is no longer employed by CGA. This foregoing provision shall only be waived with CGA's written authorization.

ARTICLE 33
BINDING EFFECT

The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the parties hereto.

ARTICLE 34
SEVERABILITY

Should any provision of this Agreement or the applications of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts of provisions of this Agreement shall remain in full force and effect.

ARTICLE 35
SURVIVAL OF PROVISIONS

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

ARTICLE 36
JOINT PREPARATION

This Agreement shall be interpreted as drafted by both parties hereto equally with each party having the opportunity to be represented by counsel of their choice.

ARTICLE 37
ENTIRE AGREEMENT

This document embodies the entire agreement between the parties and supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein. Both parties agree there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document and that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

MARK E. BERMAN, CITY ATTORNEY

"CGA":

Calvin, Giordano & Associates, Inc.

By: _____

Chris Giordano, Vice President

Witnesses:

S York

Samantha York

(Print or Type Name)

Jesus Cruz

(Print or Type Name)

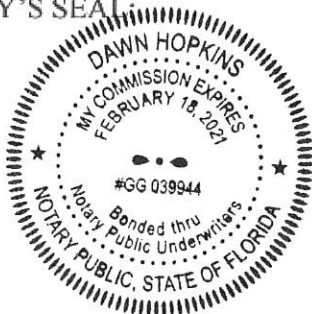
STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this 2nd day of September, 2020 by Chris Giordano as Vice President of Calvin, Giordano & Associates, Inc., a Florida corporation on behalf of the corporation. He is personally known to me or who has produced

_____ (type of identification) as identification.

NOTARY'S SEAL



Dawn Hopkins
NOTARY PUBLIC, STATE OF FLORIDA

Dawn Hopkins

(Name of Acknowledger Typed, Printed or Stamped)

GG 039944

Commission Number

FP:jnz
8/27/20
2020-923f

CGACodeCompliance4

EXHIBIT "A"

SCOPE OF WORK

A. Operations

CGA shall provide professional turnkey Code Compliance services and all administrative and clerical staff necessary to support the Office of the City's Special Magistrate in accordance with direction provided by the City Manager or his designee. This includes all transition; planning; organization; communications; clerical support; field enforcement; customer service; Information Technology services not listed in subsections (10)-(13) of the Agreement; and public education. For purposes of this paragraph, "transition" shall include CGA's continued prosecution of all open Code Compliance cases existing prior to the Term of this Agreement.

All CGA personnel required for the Work shall be based out of the Code Compliance/Special Magistrate Office and separate cubicle office in City Hall or other appropriate site(s) as City deems necessary to provide the Work and ensure a strong local presence in the community. CGA shall, at a minimum, provide Code Compliance services and maintain business hours of forty hours per week per full-time equivalent, Monday through Saturday although said Work schedule may be modified with the City's written consent.

CGA shall be responsible to perform the Work listed in the Agreement and this Exhibit, including, but not limited to the activities and services listed below.

1. Prosecute, coordinate and manage all enforcement cases authorized to be heard by the Special Magistrate including, but not limited to, the following practice areas:
 - a. Code Compliance;
 - b. Building (E.g. structural, plumbing, electrical, alarm violations, etc.);
 - c. Engineering;
 - d. Fire;
 - e. Animal Control- Dangerous Dog Appeals;
 - f. Commercial Vehicle- Violation Appeals;
 - g. Business Tax Receipts; and
 - h. Water Restrictions.
2. Attend, set and coordinate Special Magistrate hearing and compliance dates
3. Develop and manage the Agenda for Special Magistrate hearings
4. Prepare and attest to all orders issued by the Special Magistrate
5. Data entry; prepare, manage and maintain all records, data and legal documents associated with Code Compliance and the Office of the Special Magistrate, including archiving and purging in accordance with records retention requirements set forth in Florida Statutes

6. Mail, post and otherwise satisfy legal notice requirements for public hearings in accordance with § 162, Florida Statutes
7. Assist City Attorney's Office with all foreclosure and enforcement related matters, including preparing for hearings before the Special Magistrate; City Boards such as the Zoning Board of Appeals and Nuisance Abatement and Unsafe Structure Boards; other legal, administrative or regulatory bodies; and in Circuit and County Court
8. Work as part of an enforcement team and coordinate with various City disciplines and BSO to identify and address problem properties
9. Take all actions needed to identify and address public nuisance properties cited under § 96 of the City's Code of Ordinance and § 162, Florida Statutes
10. Respond to Subpoenas and appear at depositions related to the Work
11. Process lien payments and prepare/record satisfactions/releases
12. Regularly attend meetings of the City Commission, neighborhood organizations, community businesses, City Boards as requested, etc. as a priority to ensure appropriate representation of Code Compliance interests; educate the public and enhance Work performance
13. Electronically automate all administrative, field and prosecutorial functions utilizing its own trademarked GovEasy software, including providing field personnel ruggedized laptops with real-time online Code Compliance data and printers in the vehicles
14. On or before October 1st annually, or upon termination of this Agreement should termination occur prior to October 1st, transfer and provide City on a disk or other media in a viewable format approved by City, any and all Code Compliance operational and financial data, including all violation information and photographs from the preceding year
15. Maintain and utilize the City's Naviline system for enforcement cases in existence prior to commencing the Term hereunder and subsequently after City staff open a new Code Compliance case pursuant to issuance of a Notice of Violation
16. Contribute to, become familiar with and enforce, revisions to the City's Code of Ordinances designed to improve the City's appearance, address concerns raised by the public or provide new guidelines
17. Provide all maintenance and repairs on the vehicles City provides for the Work as listed in Exhibit B in accordance with all manufacturer's standards, warranty, state and federal requirements and also supply any additional vehicles to provide back-up service in the event one or more City vehicles are out of service
18. Purchase and maintain the requisite insurance coverage on the vehicles City provides for the Work

19. At the request of City's Contract Administrator, from time to time due to exigent circumstances and lack of available law enforcement officers, the Project Manager or Supervisor shall be responsible to coordinate with the City's designated Towing Contractor and arrange for the towing of vehicles illegally parked on City streets and right-of-way

B. Personnel

1. Professional Staffing. CGA be solely responsible to employ, manage and fully compensate all requisite professional staff hereunder, conduct all personnel actions necessary to ensure successful performance of the Work, and at all times during the Term provide the following staffing:

- a. Vice President, Governmental Services - Contract Administrator;
- b. Director of Code Compliance - Project Manager;
- c. One (1) full-time equivalent Code Enforcement Supervisor with overall responsibility to administer the Work;
- d. A minimum of eleven (11) full-time equivalent field Code Compliance Inspectors, each assigned to a geographic service area, to identify and address violations of the City's Code of Ordinances, the Florida Building Code and other applicable local Code issues; and
- e. Two (2) full-time equivalent Administrative Assistants, one of which is designated as Supervisor of the administrative support staff and both of which shall be responsible to perform all tasks necessary to support the Work, including processing enforcement actions, written and verbal communications, scheduling, case management and recordkeeping

2. Training. CGA shall ensure the Project Manager, Code Compliance Supervisor and eleven (11) Inspectors performing the Work are certified or otherwise professionally trained as set forth below.

- a. At a minimum, all Code Compliance Inspectors shall have obtained Level-I Certification from the Florida Association of Code Enforcement prior to commencing the Work and also be required to obtain Level II Certification within one year thereafter.
- b. At a minimum, all Code Compliance Supervisors hereunder shall have obtained Level-II Certification from the Florida Association of Code Enforcement prior to commencing the Work and also be required to obtain Level III Certification within one year thereafter.
- c. Should the foregoing certification levels be modified or eliminated, the Project Manager, Supervisor and Inspectors shall be required to take and pass coursework covering the equivalent subject matter.

In addition, at least one of CGA's requisite field staff shall be certified by the State of Florida as a Parking Enforcement Specialist. Only personnel certified as a Parking Enforcement Specialist are authorized to issue parking citations hereunder.

C. Reports

1. CGA shall be required to provide the City's Contract Administrator monthly performance reports which shall include, but not be limited to, the following information:
 - a. Number of new Code Compliance cases opened;
 - b. Number of new Code Compliance cases opened as the result of a complaint;
 - c. Number of prior Code Compliance cases open from the prior month;
 - d. Number of Inspections;
 - e. Number of Re-inspections;
 - f. Number of Code Compliances cases closed;
 - g. Number of Code Compliance cases resolved before the Special Magistrate;
 - h. Revenue collected;
 - i. Revenue outstanding; and
 - j. Staffing Roster of weekly hours worked per full-time equivalent.
2. CGA shall also be responsible to prepare and provide such other additional reports requested by City as necessary.
3. On or before November 30th of each year, CGA shall be required to submit a report to City which provides productivity measures reported on a monthly basis for the previous fiscal year and measurable performance goals to be achieved the following year, including special projects to be implemented and any other additional information requested by the City's Contract Administrator.

EXHIBIT "B" Asset Master List

City of Pompano Beach					
W114 - Asset Master List					
8/19/2020 2:50:57 PM					
	FINANCIAL				
	REFERENCE				ACQUIRE
ASSET NUMBER	NUMBER	DESCRIPTION	SERIAL NUMBER	LICENSE	DATE
DEPARTMENT: 1530 - Code Compliance					
70611	53532	2016 NISSAN Frontier	1N6BD0CT0GN731394	XF0203	03/09/2016
70612	53533	2016 NISSAN Frontier	1N6BD0CT3GN730496	XF0210	03/07/2016
70613	53534	2016 NISSAN Frontier	1N6BD0CT6GN732226	XF0211	03/07/2016
70614	53535	2016 NISSAN Frontier	1N6BD0CTXGN727837	XF0208	03/09/2016
70615	53536	2016 NISSAN Frontier	1N6BD0CTXGN727935	XF0212	03/09/2016
70616	53537	2016 NISSAN Frontier	1N6BD0CT6GN732257	XF0213	03/09/2016
70617	53538	2016 NISSAN Frontier	1N6BD0CTXGN731192	XF0215	03/07/2016
70618	53539	2016 NISSAN Frontier	1N6BD0CT0G732240	XF0214	03/07/2016
70900	53912	2019 NISSAN Frontier	1N6BD0CTXKN776531	XH7103	10/21/2019

City of Pompano Beach					
W114 - Asset Master List					
8/19/2020 2:54:01 PM					
	FINANCIAL				
	REFERENCE				ACQUIRE
ASSET NUMBER	NUMBER	DESCRIPTION	SERIAL NUMBER	LICENSE	DATE
DEPARTMENT: 4920 - Solid Waste Disposal Comm					
40702	53617	2017 Ford Escape	1FMCU9GD0HUD43759	XF6358	04/07/2017
40703	53618	2017 Ford Escape	1FMCU9GD9HUD43758	XF6359	04/07/2017

EXHIBIT C

INSURANCE REQUIREMENTS

CGA shall not commence services under the terms of this Agreement until certification or proof of insurance detailing terms and provisions has been received and approved in writing by the City's Risk Manager. If you are responding to a bid and have questions regarding the insurance requirements hereunder, please contact the City's Purchasing Department at (954) 786-4098. If the contract has already been awarded, please direct any queries and proof of the requisite insurance coverage to City staff responsible for oversight of the subject project/contract.

CGA is responsible to deliver to the City for timely review and written approval/disapproval Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which name on a primary basis, the City as an additional insured on all such coverage.

Throughout the term of this Agreement, City, by and through its Risk Manager, reserve the right to review, modify, reject or accept any insurance policies required by this Agreement, including limits, coverages or endorsements. City reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as City's review or acceptance of insurance maintained by CGA, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by CGA under this Agreement.

Throughout the term of this Agreement, CGA and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverages and limits described herein, including endorsements.

A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440. CGA further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

B. Liability Insurance.

(1) Naming the City of Pompano Beach as an additional insured as City's interests may appear, on General Liability Insurance only, relative to claims which arise from CGA's negligent acts or omissions in connection with CGA's performance under this Agreement.

(2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

Type of Insurance**Limits of Liability****GENERAL LIABILITY:**

Minimum 1,000,000 Per Occurrence and
\$2,000,000 Per Aggregate

* Policy to be written on a claims incurred basis

XX	comprehensive form	bodily injury and property damage
XX	premises - operations	bodily injury and property damage
—	explosion & collapse hazard	
—	underground hazard	
XX	products/completed operations hazard	bodily injury and property damage combined
XX	contractual insurance	bodily injury and property damage combined
XX	broad form property damage	bodily injury and property damage combined
XX	independent CONTRACTORS	personal injury
XX	personal injury	
—	sexual abuse/molestation	Minimum \$1,000,000 Per Occurrence and Aggregate
—	liquor legal liability	Minimum \$1,000,000 Per Occurrence and Aggregate

AUTOMOBILE LIABILITY:

Minimum \$1,000,000 Per Occurrence and \$2,000,000 Per Aggregate. Bodily injury (each person) bodily injury (each accident), property damage, bodily injury and property damage combined.

XX comprehensive form
XX owned
XX hired
XX non-owned

REAL & PERSONAL PROPERTY

— comprehensive form Agent must show proof they have this coverage.

EXCESS LIABILITY

Per Occurrence Aggregate

XX	other than umbrella	bodily injury and property damage combined	\$2,000,000	\$2,000,000
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PROFESSIONAL LIABILITY

Per Occurrence Aggregate

XX	* Policy to be written on a claims made basis	\$5,000,000	\$5,000,000
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(3) If Professional Liability insurance is required, CGA agrees the indemnification and hold harmless provisions set forth in the Agreement shall survive the termination or expiration of the Agreement for a period of four (4) years unless terminated sooner by the applicable statute of limitations.

C. Employer's Liability. If required by law, CGA and all subcontractors shall, for the benefit of their employees, provide, carry, maintain and pay for Employer's Liability Insurance in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) per employee, Five Hundred Thousand Dollars (\$500,000) per aggregate.

D. Policies: Whenever, under the provisions of this Agreement, insurance is required of the CGA, CGA shall promptly provide the following:

- (1) Certificates of Insurance evidencing the required coverage;
- (2) Names and addresses of companies providing coverage;
- (3) Effective and expiration dates of policies; and
- (4) A provision in all policies affording City thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

E. Insurance Cancellation or Modification. Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the issuing company shall provide thirty (30) days written notice to the City.

F. Waiver of Subrogation. CGA hereby waives any and all right of subrogation against the City, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CGA shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should CGA enter into such an agreement on a pre-loss basis.

EXHIBIT D

RECORDKEEPING, INSPECTION AND AUDIT PROCEDURES

CGA shall use such accounting methods and procedures as may be prescribed by City, in accordance with generally accepted accounting principles, which shall include but not be limited to, those methods and procedures set forth in Agreement and in this Exhibit.

CGA shall preserve and keep a true and accurate account of records, and agrees to make available locally at all reasonable times for City's inspection and audit, all such financial records and supporting documentation attendant to CGA agreement and activities. Records shall include but not be limited to, all business records, bookkeeping/accounting records, receipts, invoices, bank statements, attendance rosters, financial/statistical records including all monies received attendant to CGA activities under this Agreement.

CGA shall be required to record and preserve complete and accurate records attendant to this Agreement for a period of three (3) years after its termination or as otherwise required by applicable law(s), including the required retention period of the Florida Public Records Act, Chapter 119, of Florida Statutes as referenced in agreement. However, if an audit has been initiated and audit findings have not been resolved, the records shall be retained until resolution of the audit findings.

If such inspection or audit discloses a liability of fees, CGA shall promptly pay the amount due within ten (10) calendar days. If such liability exceeds three percent (3%) of the fees, CGA shall pay City the full amount due and also pay for the cost of the City's audit within 10 calendar days.