City of Pembroke Pines

Building Department Services Report

Prepared By: City Administration

BUILDING DEPARTMENT SERVICES REPORT

Executive Summary

The City has been in contract with Calvin Giordano and Associates, Inc. ("CGA"), for building department services since 2009. This white paper is being presented at the request of the City Commission, and in response to the 9th Amendment to the agreement brought forward to the Commission.

This white paper examines the history of the contract and contract renewals, provides the benefits of having a 5-year contract versus the current annual year-to-year contract, examines the advantages of long-term contracts, justification for the 5-year initial term and concludes with the City Administration making a recommendation to not only renew the contract for an additional 5 years, but to also include longer term renewal options for this contract.

On October 7, 2020, the City of Pembroke Pines Commission made a motion to table the item "Motion to approve the ninth amendment to the agreement between Calvin Giordano and Associates, Inc. ("CGA") and the City of Pembroke Pines ("City") for Building Services for a five-year period beginning July 1, 2021" and directed the City Manager to provide a White Paper that will explains the value of the five (5) year contract and the mathematics of the savings of the year-to-year contract vs. the five (5) year contract.

1. Background and History on entering into an Agreement with Calvin, Giordano & Associates, Inc., for Professional Building Department Services.

The information presented below includes the background and history of the CGA contract with more detailed information presented in **Appendix A**.

On February 18, 2009, the City Administration brought forward an Agenda Item for Discussion and Possible Action regarding the decrease of revenue in the Building Department. The City Manager recommended that administration be directed to explore all possible options to reduce expenditures to a level equal to anticipated revenues. A motion was made by Commissioner McCluskey, seconded by Commissioner Castillo, to direct the City Manager to do what he has recommended and come back to Commission with all possible solutions from various sources, by March 18, 2009, with the final timeline for implementation by May 4, 2009 or sooner, if possible. The motion passed as follows:

Aye: 5	Mayor Ortis, Vice Mayor Shechter, Commissioner Castillo, Commissioner McCluskey and Commissioner Siple
Nay: 0	

On April 15, 2009, the Commission held a workshop on the discussion on potential solutions for budget shortfall in the Building Division. The City Manager made a presentation to the Commission on the Building Division 2008-09 budget shortfall, and several Building Division options for the Commission to consider and recommended a change in the building division structure in order to correct the shortfall. The City staff recommended to outsource the Building Division for a cost avoidance of -$1,831,180 for the remainder of this fiscal year 2008-09. The Building Division had deficit of -$1,416,720 and a projected shortfall of -$3,247,900 for the current fiscal year 2008-09. The fiscal year 2009-10 shortfall was estimated at -$3,836,663 if no changes were made.

On April 15, 2009, the City Administration brought forward an Agenda Item for (A) Motion to outsource the building division functions to an entity to be selected by City Commission (Based on a shortlist provided by the review committee) to avoid additional losses from May 2009 to September 2009 in the amount of -$1,831,180, and an additional -$3,836,663 for fiscal year 2009-10; (B) Motion to select an entity to provide building plan review, permitting and inspection services for the City of Pembroke Pines. The agenda item stated that on March 17th, 2009 a Request For Proposal (RFP 09-05) for Building Division services was advertised. On March 31st, 2009, six (6) proposals were received. Five (5) proposals were from private companies and one (1) from Broward County Permitting, Licensing, and Consumer Protection Division. On April 8th, 2009 a review committee short listed the top three (3) entities: 1- CAP Government, 2- Broward County Permitting, Licensing, and Consumer Protection Division, and 3- Calvin, Giordano & Associates, Inc.

A motion was made by Commissioner Siple, seconded by Vice Mayor Castillo, to direct the City Manager to work in good faith with the public employees' union, and all of his resources are to be signaled in on coming back to Commission at the May 20, 2009 Commission meeting with a plan to solve the -$626,000 deficit for current year. The motion passed as follows:

Aye: 5	Mayor Ortis, Vice Mayor Castillo, Commissioner Shechter, Commissioner McCluskey and Commissioner Siple
Nay: 0	

The Commission concluded after a lengthily discussion to defer Item 9 A & B to a time certain of May 20, 2009. The motion passed as follows:

Aye: 5	Mayor Ortis, Vice Mayor Castillo, Commissioner Shechter, Commissioner McCluskey and Commissioner Siple
Nay: 0	

On May 20, 2009, the City Administration brought forward an Agenda Item for Discussion and Possible Action on the restructure and/or outsource of the building division. Administration provided two options: Option 1 – Contract with an outside entity to manage and administer the functions of the Building Division estimated a shortfall for fiscal year 2009 of approximately

-$1,900,000 if implemented by June 1st, 2009. The option would also eliminate the Building Division budget shortfall for the proposed fiscal year 2010 budget. Option 2 – Reducing staff to (28) fulltime employees with a (36) hours a week which results in a 10% cut in salary. Option 2 estimated a shortfall of approximately -$2,400,000 if implemented by June 1st, 2009 and an approximately -$1,100,000 for the proposed budget for fiscal year 2010. For the prior years, the shortfalls in the Building Division was funded by the General Fund. A motion was made by Vice Mayor Castillo, seconded by Commissioner Siple, to entertain, consistent with discussions between the labor and the City and the Unions, a proposal from Labor on June 3, 2009, and that, in the interim, Commission defer indefinitely the proposals for contracting out, preserving the integrity of the RFP. The motion passed as follows:

Aye: 5	Mayor Ortis, Vice Mayor Castillo, Commissioner Shechter, Commissioner McCluskey and Commissioner Siple
Nay: 0	

On June 3, 2009, the City Administration brought forward an Agenda Item for Discussion and Possible Action on the restructure and/or outsource of the building division. The agenda item stated that the General Employees Union was scheduled to hold a contract vote for all General Employees on Monday June 1st. The vote was whether to ratify changes to their existing contract to include balancing out the Building Department. City Manager stated that the Federation of General Employees did not ratify the proposed contract amendments and, therefore, the only solution that the City had was to recommend outsourcing the building department services. A motion was made by Commissioner McCluskey, seconded by Commissioner Shechter, to interview the three top contenders for the outsourcing of the Building Department function. The motion passed as follows:

Aye: 4	Mayor Ortis, Vice Mayor Castillo, Commissioner McCluskey and Commissioner Shechter
Nay: 1	Commissioner Siple

A motion was made by Vice Mayor Castillo, seconded by Commissioner McCluskey, to accept the tally. The motion passed as follows:

Aye: 4	Mayor Ortis, Vice Mayor Castillo, Commissioner McCluskey and Commissioner Shechter
Nay: 1	Commissioner Siple

On June 17, 2009, the City Administration brought forward an Agenda Item for a Motion to approve the agreement between the City of Pembroke Pines and Calvin, Giordano & Associates, Inc. for professional building department services. A motion was made by Vice Mayor Castillo, seconded by Commissioner McCluskey, to approve the item. The motion passed as follows:

Aye: 5	Mayor Ortis, Vice Mayor Castillo, Commissioner Shechter, Commissioner McCluskey and Commissioner Siple
Nay: 0	

2. <u>Summary of Contract Renewals and Amendments</u>

The agreement between the City of Pembroke Pines and Calvin, Giordano and Associates, Inc. ("CGA") approved at the June 17, 2009 meeting, was for an initial five (5) year term for the period of July 1, 2009 to June 30, 2014. The agreement had the option for annual renewals after the expiration of the initial term.

1st Amendment - On April 6, 2011, the City Commission approved the first amendment to the agreement between the City of Pembroke Pines and CGA, for professional Building Department services. The First amendment provides for changes to the agreement including the "Legal Obligations" and "No Onsite Solicitation and Conflicts of Interest" sections. A motion was made by Commissioner McCluskey, seconded by Vice Mayor Siple, to approve the Consent Agenda, item 16. The motion passed as follows:

Aye: 5	Mayor Ortis, Vice Mayor Siple, Commissioner Shechter, Commissioner McCluskey and Commissioner Castillo
Nay: 0	

Subsequent amendments to the agreement have been brought back to the Commission on the Contract Database Report. Amendments 2 through Amendment 5 were done via emails to the City Commission. The recommendations to renew were done annually without objection, and are summarized below:

Amendment	Start	End	Notes
2nd Amendment	07/01/2014	06/30/2015	
3rd Amendment	07/01/2015	06/30/2016	
4th Amendment	07/01/2016	06/30/2017	Added new Public Records Language
5th Amendment	07/01/2017	06/30/2018	

6th Amendment - On February 21, 2018, the City Administration brought forward an Agenda Item for a Motion to approve the department's recommendations for the items listed on the contract database report (A) Calvin, Giordano & Associates, Inc. for building department services recommending the City to renew the 6th amendment to the agreement for an additional one (1) year term, commencing on July 1, 2018 and expiring June 30, 2019. A motion was made by Vice Mayor Castillo, seconded by Commissioner Siple to approve the Consent Agenda. The motion passed as follows:

Aye: 5	Mayor Ortis, Vice Mayor Castillo, Commissioner Schwartz, Commissioner Siple, and Commissioner Monroig
Nay: 0	

7th Amendment - On September 4th, 2018, the City Administration brought forward an Agenda Item for a Motion to approve the department's recommendations for the items listed on the contract database report (A) Calvin, Giordano & Associates, Inc. for building department services recommending the City to renew the 7th amendment to the agreement for an additional one (1) year term, commencing on July 1, 2019 and expiring June 30, 2020. A motion was made by Commissioner Schwartz, seconded by Commissioner Siple, to approve Section (A) of Consent Item 8. The motion carried as follows

Aye: 3	Mayor Ortis, Commissioner Castillo, and Commissioner Siple
Nay: 1	Commissioner Schwartz
Absent: 1	Vice-Mayor Good

8th Amendment - On June 3, 2020, the City Administration presented an agenda item for the Department recommendations for the items listed on the Contracts Database Report, which included item (B) which was the recommendation to renew the Calvin, Giordano & Associates, Inc. - Professional Services Building Department Agreement. A motion was made by Commissioner Good, Jr., seconded by Vice Mayor Siple, to approve section (B) of Consent Item 9 to approve the recommendation to renew the contract with Calvin Giordano & Associates, Inc. Professional Services Building Department; to approve the contract with the requirement that the City Manager negotiate with the vendor to achieve better revenue share for the City in terms that could be brought back to Commission later. The Motion was carried as follows:

Aye: 5	Mayor Ortis, Vice Mayor Siple, Commissioner Good, Commissioner Schwartz and Commissioner Chanzes
Nay: 0	

9th Amendment - On October 7, 2020, the City Administration brought forward an Agenda Item for a Motion to approve the ninth amendment to the agreement between CGA and the City for Building Services for a five-year period beginning July 1st, 2021. This Ninth Amendment to the agreement includes the following negotiated changes:

a. City would retain 11.5% of all building permit revenues, beginning from the first dollar received in building permit fees. No sales tax would be charged on the City's retention of building permit fees.
b. City would continue to charge CGA both the contractual Administrative Fee and Rental Fee per the existing contract. Including applicable sales tax for the rental fee.
c. City will be responsible for their check and credit card processing fees associated with the intake of the permit fees, planning and zoning fees, engineering fees, fire fees, CO fees and impact fees.
d. The contract renewal shall be for an initial five (5) year period with one (1) year renewals similar to the existing contract.
e. All remaining terms of the contract would remain in-tact, such as waiving 100% of City project permit fees.

After the item was read into the record Commissioner Good made a motion, seconded by Commissioner Castillo to discuss the motion to approve the Ninth Amendment to the Agreement between CGA and the City. Whereupon a motion to table the item was made by Commissioner Good and seconded by Vice Mayor Schwartz. The motion passed as follows:

Aye: 4	Vice Mayor Schwartz, Commissioner Good, Commissioner Castillo and Commissioner Siple,
Nay: 1	Mayor Ortis

A subsequent motion was made by Commissioner Good Jr., seconded by Vice Mayor Schwartz, to reconsider the motion to table the item. Commissioner Siple asked when the item would be brought back, given the time-sensitivity explained by the City Manager. The motion to reconsider the item and make sure it gets on the next meeting agenda carried the following votes:

Aye: 3	Mayor Ortis, Commissioner Castillo, and Commissioner Siple
Nay: 2	Vice Mayor Schwartz, and Commissioner Good Jr.

3. **Benefits of the five (5) year contract vs. the year-to-year current contract with CGA**

Under the current contract for building services between the City and CGA, the City collects revenues as follows:

a. On a monthly basis, the City receives a contractual Administrative Fee and Rental Fee, adjusted by the Consumer Price Index (CPI), on each July 1st.
b. On an annual basis, the City receives 10% of the gross revenues collected in excess of $4,000,000.

Under this contract, the City has been collecting an average of approximately $604,840 on a yearly basis (based on the last five years). Also, under the current contract, CGA is responsible for collecting and maintaining all fees and payments associated with the performance of the agreement on behalf of the City.

As instructed by the City Commissioners on the June 3, 2020, the City Manager has negotiated a new contract terms for building services with CGA for a five (5) year renewal term. Under the new proposed contract for building services between the City and CGA, the City will collect revenues as follows:

a. On a monthly basis, the City would continue to receive a contractual Administrative Fee and Rental Fee, adjusted by CPI, on each July 1st.
b. On a monthly basis, the City would receive 11.5% of all building permit revenues, beginning from the first dollar received in building permit fees. No sales tax would be charged on the City's retention of building permit fees.
c. City will be responsible for their check and credit card processing fees associated with the intake of the permit fees, planning and zoning fees, engineering fees, fire fees, CO fees and impact fees.

As a result of these negotiated terms, the renewal of the contract for building services for a five (5) year term would be more beneficial to the City as the City will receive additional revenues of approximately $270,000 to $290,000 on a yearly basis. This is also more beneficial to the City, in that the City will start earning additional revenues beginning with the first dollar, rather than depending on revenues to reach $4 Million.

The table below shows the financial benefits of the 5-Year Proposal versus the current year-to-year contract.

Current Year-to Year Contract:

		City Current Contract Revenues				
Contract Year Ended	Gross Revenues as reported by CGA	Add'l Rent Excess 10% over $4M	Annual Rental	Admin Fee	Total Billed & Collected by City	
06/30/16	6,008,878	200,888	161,905	165,209	528,002	
06/30/17	7,212,518	321,252	164,253	167,605	653,109	
06/30/18	8,724,710	472,471	168,852	172,298	813,620	
06/30/19	5,803,616	180,362	174,778	178,345	533,485	
06/30/20	5,350,582	135,058	178,641	182,287	495,986	
Total	**33,100,305**	**$1,310,030**	**$848,429**	**$865,743**	**$3,024,202**	**Corrected Totals**

Proposed Contract with initial 5- Year Term:

		NEW PROPOSAL EFFECTIVE 7-1-2021						
Contract Year Ended	Gross Revenues as reported by CGA	Proposal City receives 11.5% of CGA Revenues	Annual Rental	Admin Fee Revenues	Less credit card fees	100% City Waived Fees	Net Revenues Received Under Proposal	Additional Revenues Over Current Contract
06/30/16	6,008,878	691,021	161,905	165,209	(142,917)	-	875,218	**347,216**
06/30/17	7,212,518	829,440	164,253	167,605	(142,917)	-	1,018,380	**365,271**
06/30/18	8,724,710	1,003,342	168,852	172,298	(201,840)	-	1,142,651	**329,031**
06/30/19	5,803,616	667,416	174,778	178,345	(309,558)	-	710,981	**177,496**
06/30/20	5,350,582	615,317	178,641	182,287	(212,586)	-	763,658	**267,673**
Total	**33,100,305**	**$ 3,806,535**	**$ 848,429**	**$ 865,743**	**$ (1,009,818)**	**$ -**	**$ 4,510,889**	**$ 1,486,687**
Average using Last 5 Years	**$6,620,061**	**$ 761,307**	**$ 169,686**	**$ 173,149**	**$ (201,964)**	**$ -**	**$ 902,178**	**$ 297,337**

4. Advantages of Long-term Contracts

There are usually many benefits of entering into a long-term versus a short-term contract. The Subpart 17.1 – Multi-year contracting of the government contracting website acquisition.gov, addresses the benefits of multi-year contracting. Per subpart 17.105-2 Objectives, the Use of multi-year contracting is encouraged to take advantage of one or more of the following:

a. Lower costs.
b. Enhancement of standardization.
c. Reduction of administrative burden in the placement and administration of contracts.
d. Substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses, and phase-out costs.
e. Stabilization of contractor work forces.
f. Avoidance of the need for establishing quality control techniques and procedures for a new contractor each year.
g. Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs.
h. Providing incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

Long-term contracts also facilitate more time to negotiate renewals. The one-year renewals with CGA are limiting; in that as soon as the contract renewal is approved within 3 months of that renewal; another renewal must be presented in order to meet Commission and Contract deadlines.

A contractor who receives a long-term contract will be more willing to offer better terms overall since there is increased security knowing that the agreement will last several years. There is also the benefit of predictability, which allows the contractor to manage expenditures more securely and allow for those savings to be shared as part of the negotiations. Long-term contracts also foster and build stronger partnerships as relationships take time to build. The longer a contract is in place, the more time people have to establish bonds. With these bonds comes a greater understanding of what is needed, as well as higher levels of dedication from those involved. Therefore, long-term relationships are critical to creating a competitive advantage.

5. <u>Justification for a Five Year Agreement and the Additional Revenues to the City</u>

The benefits of the five (5) year contract will give the City additional revenues of approximately $290,000 per year for five years. The total of $1.4 Million that is being offered by CGA are compounded by the savings that will be realized by the City for not having to switch contractors each year.

The additional revenues provided by CGA are in response to the multi-year contract. The savings to CGA that are being shared with the City are realized for project and employee retention. If CGA was at risk of having the possibility of one-year contracts not being renewed, they would need to expend resources and costs to ensure that projects were lined up for each of the staff members to transition to after this project's completion. The transition of provider costs would impact both CGA and the City as the transition always requires more resource and staff time than continuing services.

Finally, the City is never locked into the contract for the full five-year term. As with most, if not all City contracts, there is a termination clause both for cause or convenience with proper notice. This termination clause alleviates the City's risk of being locked into a five-year contract.

6. <u>Conclusion and Recommendation</u>

Oliver Hart, Nobel Prize-winning Harvard economist, and Kate Vitasek, faculty at the University of Tennessee, along with the Swedish attorney David Frydlinger, co-wrote a Harvard Business Review article "A New Approach to Contracts" in the September to October 2019 issue. In this article, they contend that many business contracts are imperfect, no matter how bulletproof you try to make them. Especially in complicated relationships such as outsourcing, one side ends up feeling like they're getting a bad deal, and it can spiral into a tit for tat battle. Hart and Vitasek maintain that companies should instead adopt so-called "relational contracts". Their research shows that creating a general playbook built around principles like fairness and reciprocity offers greater benefits to both businesses **(See Appendix B).**

The City of Pembroke Pines has had a long-standing contract with CGA. We believe that we have followed best practices in the negotiation, and have presented to the City Commission a "relational contract" which is beneficial to both parties; and built around the principles mentioned above such as fairness and reciprocity. The relationship created by the City and CGA has led to many opportunities for joint partnerships in numerous endeavors supported and spearheaded by the City. The City will receive increased revenues, over and above the current annual contract; and CGA will receive a longer term contract that in essence is more stable.

Additionally, one could also argue that the City's ability to "terminate for convenience", which grants the City total freedom to the end the contract after a specified notice period does not provide CGA with a sense of security. It essentially converts a long-term contract to short-term; as there is always a possibility for termination.

The CGA contract provides some important distinctions, in that it was the first of its kind entered into by the City. Additionally it has been purely revenue based; which makes the administration of this contract unique from a management point of view, and lastly, no other outsourced contract has annual renewals.

In light of this information, the City Administration hereby recommends that the CGA contract be renewed under the favorable terms as presented to the City Commission for the proposed 5-year term; and that this be followed by two (2) additional three (3) year renewal options; instead of annual renewals.

APPENDIX A – Additional Information

Detailed Background & History on entering into an Agreement with Calvin, Giordano & Associates, Inc., for Professional Building Department Services:

1. On February 18, 2009, the City Administration brought forward an Agenda Item for Discussion and Possible Action Regarding the decrease of revenue in the Building Department.
    a. The agenda item stated:
        i. Review of actual revenues for the first quarter of FY2008/2009 revealed a significant reduction of approximately 50% in revenues, which was extrapolated into a projected shortfall of almost 2.9 million dollars for the current fiscal year.
        ii. The current workload for all disciplines and the total number of inspections reveal a similar trend.
        iii. Several short and long-term options have been presented which include an immediate layoff of five employees (part time and contractual) followed by 10 more full time employees. There exists a possibility of transferring some employee(s) to the Code Compliance Division, subject to Commission approval.
        iv. Other options requiring further discussion, review, and request for proposals may include outsourcing, hiring a private company, and/or obtaining inter-local agreements with other municipalities.
        v. Recommend that administration be directed to explore all possible options to reduce expenditures to a level equal to anticipated revenues. This process needs to be completed within the next three months to avoid further losses.
    b. The agenda included an attachment titled "1. Fire Chief's Revenue vs. Expenditure Report" which addressed the decline in construction permits and inspections as a result of the economic conditions, depressed housing market, and minimal land for development. The report stated that "After review, it is apparent that expenditures cannot be reduced to the necessary level without significant changes to the operation and organization of the Building Department." The report also provided financial trends and analysis along with addressing the following possible options:
        i. Reduction in Staffing Levels
        ii. Transferring of Employees to the Code Compliance Division and Salary Reductions
        iii. Outsourcing or Privatization
            1. Inter-local Agreements between with cities or counties
            2. Private Companies
        iv. Utilizing an Employment Service
    c. Per the meeting minutes:
        i. City Manager Dodge gave a power point presentation outlining the revenue projections for this fiscal year in the Building Division. He stated that the workload is down fifty percent, which has a significant impact on this year's budget; also, for the first four months of this fiscal year, based on the activity of the building department, the projected total revenue would be $2.7 million, and

when that is compared to the approved budget adopted in September ($5.7 million), it leaves a shortfall of $2.9 million dollars.

ii. City Manager Dodge presented options for the Commission to review to minimize the shortfall: Layoff of five (part-time and contractual) employees followed by ten full time employees; Transfer some building department employees to Code Compliance Division. Other options are: Outsourcing, inter-local agreements with other municipalities or Broward County; employee generated proposals, which could be part of the process; and using reserves.

iii. Also, there is a significant time line and recommend that all proposals be put together and received by mid-March; review and recommend form of action by April 1st, move to outsource or implement new program by May 4th. Recommended the Commission implement the first phase, immediately, because the City has no choice. The second phase, if agreed to by the Commission will be brought back with formal recommendation no later than the early part of May.

iv. Commissioner Siple advocated looking at replacing contract employees with City employees; use GO bonds for redevelopment to start jobs; and use reserves to protect family and employees.

v. Commissioner Castillo recommended directing administration to explore all options to reduce expenditures to equal anticipated revenues. Also, in Fire Chief Picarello's memorandum he laid out all the options, but did not include analysis of the pros and cons; need more information and input from the stockholders. City Attorney Goren explained the City Manager's duties are set forth in the City

vi. Charter and his contract. The City Manager has a responsibility to make recommendations and provide information to the Commission; however, the Commission must weigh the backup information provided as to sufficiency.

vii. Commissioner McCluskey recommended that the City Manager eliminate: (1) the contract positions; (2) part-time positions; (3) move building department employees into other departments.

d. Voting Action:

i. A motion was made by Commissioner McCluskey, seconded by Commissioner Castillo, to direct the City Manager to do what he has recommended [reference Item 5 in the Summary Explanation and Background of the Agenda Request Form 09-0088] and come back to Commission with all possible solutions from various sources, by March 18, 2009, with the final timeline for implementation by May 4, 2009 or sooner, if possible. The motion passed by the following vote:

Aye: 5	Mayor Ortis, Vice Mayor Shechter, Commissioner Castillo, Commissioner McCluskey and Commissioner Siple
Nay: 0	

2. On April 15, 2009, the Commission held a workshop on the discussion on potential solutions for budget shortfall in the Building Division.

   a. The agenda item stated:

i. On February 18, 2009, City Manager made a presentation to Commission on the Building Division 2008-09 budget shortfall.
ii. Based on the current workload for all disciplines there are currently more employees than required.
iii. Revenue projections for 2008-09 fiscal year reveal a shortfall of $3,247,900.
iv. Based on the projected revenues and expenditures for fiscal year 2009-10, there is an estimated shortfall of $3,836,663.
v. To correct this shortfall, the Building Division structure needs to change.
vi. On March 17th, 2009 a Request For Proposal (RFP 09-05) for Building Division services was advertised.
vii. On March 31st, 2009, six (6) proposals were received. Five (5) proposals were from private companies and one (1) from Broward County Permitting, Licensing, and Consumer Protection Division.
viii. Staff recommends to outsource the Building Division for a cost avoidance of $1,831,180 for the remainder of this fiscal year. The Building Division has a current deficit of $1,416,720 and a projected shortfall of $3,247,900 for the current fiscal year. The fiscal year 2009-10 shortfall is estimated at $3,836,663 if no changes are made.

b. The agenda included the following attachments:
   i. 1. Building Department Options
   ii. 2. Facility Contract Services Comparison

c. Per the meeting minutes:
   i. City Manager Dodge reported that, at a recent Commission meeting, staff was directed to respond to a series of questions raised by Commissioners regarding FY2009 anticipated shortfall of $2.5 to 3 million dollars in the Building Division and the anticipated shortfall of $3.8 to 4 million dollars for FY2010 budget if no changes were made.
   ii. City Manager Dodge presented several Building Division Options for the Commission to consider and gave his recommendations.
      1. Option 1. Maintain current staffing level, loss of $3.2 million for FY2009 and $3.8 for FY 2010: Not a viable solution.
      2. Option 2. Reduce staff based on revenues; 16 layoffs, loss of $2 million for FY2009 and $809,000 for FY 2010: Reduces the budget shortfall greatly, but does not eliminate it.
      3. Option 3. Reduce staff based on current workload 15 layoffs, loss of $2.5 million for FY2009, and $2.3 for FY 2010: Reduces budget shortfall, but does not eliminate it.
      4. Option 4. Use General Obligation ("GO") bonds to avoid layoffs: Not an option, as GO bonds cannot be used for operating costs.
      5. Option 5. Use GO bonds for revitalization projects to boost construction permitting and inspections, loss of $3.2 million for FY2009, and $3.8 million for FY2010: Not an option as the number of inspections would not be enough to maintain staffing.

6. Option 6. Move employees to other departments in the City or to contract positions: Not enough cost savings to impact the budget shortfall.
7. Option 7. Outsource based on Request for Proposal (RFP), loss of $1.9 million for FY2009 and no loss for FY2010: Best option to maintain a balanced budget for the future.
8. Option 8. Increase Inspection fees: Not a viable option, as fees are currently on the high side.

iii. City Manager Dodge explained that there are two items on the regular agenda for the Commission to make a decision that will deal with the shortfall in the building department. However, if that approach creates a deficit, Commission would need to find what service to cut in order to make up for that deficit.

iv. Commissioner Siple offered some alternate solutions to the Building Division deficit: Move Building employees into contractual positions; reduce work week to 36 hours; and discuss with employees in Building who are close to retirement about a buyout. Commissioner Siple questioned, in reference to outsourcing, what is a contractual administrator.

v. City Manager Dodge illustrated the comparison by reviewing with the Commission the Facility Contract Services Comparison charts to show the significant savings to the City by using contractual employees, and explained that a contractual administrator oversees the contract and cost.

vi. Alan Eichenbaum, on behalf of the Federation of Public Employees, stated that the union is committed to eliminating the FY2009 deficit of $626,000 dollars and to work on the proposed deficit of $2.3 million dollars for FY2010, by cutting the current benefits or wages. On their behalf, he asked the Commission to adopt Option 3, and to allow them 30 days to make the necessary adjustments.

vii. City Manager Dodge explained that he is willing to work with the union and do everything that is possible to come up with a solution to the deficit, but would like to move along with a solution if what Mr. Eichenbaum is suggesting doesn't work. He asked the Commission for direction on outsourcing, because to delay for 30 days will cost the City $20,000.

3. On April 15, 2009, the City Administration brought forward an Agenda Item with the following title:

   (A) MOTION TO OUTSOURCE THE BUILDING DIVISION FUNCTIONS TO AN ENTITY TO BE SELECTED BY CITY COMMISSION (BASED ON A SHORTLIST PROVIDED BY THE REVIEW COMMITTEE) TO AVOID ADDITIONAL LOSSES FROM MAY 09 TO SEPTEMBER 09 IN THE AMOUNT OF $1,831,180 AND ANOTHER ADDITIONAL $3,836,663 FOR FISCAL YEAR 2009-10.

   (B) MOTION TO SELECT AN ENTITY TO PROVIDE BUILDING PLAN REVIEW, PERMITTING AND INSPECTION SERVICES FOR THE CITY OF PEMBROKE PINES.

   a. The agenda item stated:

      i. On March 17th, 2009 a Request For Proposals (RFP 09-05) for Building Division services was advertised.

ii. On March 31st, 2009, six (6) proposals were received. Five (5) proposals were from private companies and one (1) from Broward County Permitting, Licensing, and Consumer Protection Division.
iii. On April 8th, 2009 a review committee short listed the top three (3) entities. They are:
    1. CAP government
    2. Broward County Permitting, Licensing, and Consumer Protection Division
    3. Calvin, Giordano & Associates, Inc.
iv. a) Initial Cost:
    1. If this action is not approved by Commission, the shortfall to the Building Division budget is $3,247,900 through September 30, 2009.
    2. Based on the projected revenues and expenditures for the Building Division for FY 2009-10, there is an anticipated shortfall of $3,836,663.
    3. If action is taken, the cost will be negotiated with the outsource entity.

b. The agenda included the following attachments:
    i. Request for Proposals FI 09-05
    ii. Proposals – All Responders [Not Available On Internet]
    iii. Tall of Scoring

c. Per the meeting minutes:
    i. City Manager Dodge explained this item was discussed briefly at the workshop as a solution to avoid additional losses to the City; however, in light of that discussion Item (A) would not be the appropriate motion, because it deals with outsourcing. Item (B) deals with the selection of an entity based on negotiations in the event the goal cannot be reached with the Union to eliminate the deficit through whatever means suggested.
    ii. City Manager Dodge recommended to the Commission to interview the three firms present and make a selection to enable Administration to begin negotiating with that firm, while at the same time trying to solve the problem with the General Employees Union. If solved, within a couple of weeks it would be brought back to the Commission with recommendations.
    iii. City Attorney Goren stated Commission could direct the City Manager to, in good faith, continue the discussions with the Employees Union, but also have the Commission interview proposers; rank them and negotiate with them, but not subject their discussion to a contract until the City Manager comes back with a proposal, if at all.
    iv. Commissioner Siple expressed her opposition to the motion, but suggested instead giving the City Manager and staff two weeks to put all their resources into negotiating with the General Employees Union to find a solution to the deficit in the building department budget.
    v. Dan Reynolds, President of the Federation of Public Employees explained that thirty days would be a reasonable time to resolve the FY2009 deficit.
    vi. City Manager Dodge reiterated that this issue is not just the $600,000 deficit for FY2009, but also the issue that will affect the City next year; because with the

Union favoring Option 3, there will be a deficit of $2.3 million dollars. Mr. Dodge stated he wanted to know there is a plan of action that will take place October 1, without coming back to the Commission and addressing this issue again.

vii. The Commission concluded after a lengthily discussion to defer Item 9 A & B to a time certain of May 20, 2009.

d. Voting Action:

i. A motion was made by Commissioner Siple, seconded by Vice Mayor Castillo, to direct the City Manager to work in good faith with the public employees' union, and all of his resources are to be signaled in on coming back to Commission at the May 20, 2009 Commission meeting with a plan to solve the $626,000 deficit for this current year The motion passed by the following vote:

Aye: 5	Mayor Ortis, Vice Mayor Castillo, Commissioner Shechter, Commissioner McCluskey and Commissioner Siple
Nay: 0	

4. On May 20, 2009, the City Administration brought forward an Agenda Item with the following title:

DISCUSSION AND POSSIBLE ACTION ON THE RESTRUCTURE AND/OR OUTSOURCE OF THE BUILDING DIVISION.

a. The agenda item stated:

i. On February 18th, 2009, City Manager made a presentation to Commission on the Building Division 2008-09 budget shortfall

ii. On April 15th, 2009, the City Manager presented options to the Commission on various methods to reduce the cost to operate the Building Division which should be self-supported and not require subsidy from the General Fund.

iii. At the April 15th, 2009 meeting, Commission directed Administration to work in good faith with the Federation of Public Employees Union and to come back to Commission with a plan to resolve the Building Division current shortfall for fiscal year 2009 and the proposed budget shortfall for fiscal year 2010.

iv. Administration has developed two options as follows:

1. OPTION 1: Contract with an outside entity to manage and administer the functions of the Building Division. On March 17th, a Request for Proposal (RFP 09-05) for Building Division services was advertised. A review committee short listed the top three (3) entities that responded to the RFP. The three companies are CAP government; Broward County Permitting, Licensing and Consumer Protection Division; and Calvin, Giordano & Associates, Inc. This option would result in a shortfall for fiscal year 2009 of approximately $1,900,000 if implemented by June 1st, 2009. This option would also eliminate the Building Division budget shortfall for the proposed fiscal year 2010 budget.

2. OPTION 2: Reducing staff to (28) fulltime employees. In addition these (28) fulltime employees will have their work week reduced to (36) hours

resulting in a 10% cut in salary. The reduction in the Building Division staff and the reduction in hours are contingent on the General Employees Union ratifying the proposed contract effective October 1st. If the General Employees Union does not ratify the component related to the proposed pension modifications, OPTION 2 is not available to Commission. Material components of the proposed pension changes include the following:

a. Reduce the pension multiplier from 2.85% to 2.5% per year (for future years, as past service would be frozen at the current rate)
b. The COLA would be adjusted down from 3% to 2% (for individuals who have not retired)
c. New employees would not participate in the pension plan but would instead receive a City contribution of 10% of their base salary to a defined contribution plan.

v. Option 2 would result in a fiscal year 2009 shortfall of approximately $2,400,000 if implemented by June 1st, 2009. This is approximately $500,000 greater than the shortfall in OPTION 1 for fiscal year 2009. In addition this option would result in a shortfall of approximately $1,100,000 for the proposed budget for fiscal year 2010. For the past several years, shortfalls in the Building Division have been funded by the General Fund.

vi. **Please note: The ratification of the proposed General Employees Union contract, which includes the pension changes must occur to reduce and balance the General Fund budget shortfall for fiscal year 2010 regardless of the Commissions option choice on the outcome of Building Division.

vii. If OPTION 1 is selected, an outside entity needs to be selected by Commission.

viii. If OPTION 2 is selected the General Fund will have to absorb the Building Division deficit from June 1, 2009 to September 30, 2009 which is estimated at $500,000 and the proposed 2010 budget deficit of $1,100,000.

ix. FINANCIAL IMPACT DETAIL:

1. a) Initial Cost:

OPTION 1:	
Fiscal Year 2009 Building Division Projected Deficit:	$ 1,900,000
Fiscal Year 2010 Building Division Projected Deficit:	$ 0
OPTION 2:	
Fiscal Year 2009 Building Division Projected Deficit:	$2,400,000
Fiscal Year 2010 Building Division Projected Deficit:	$1,100,000

2. b) Amount budgeted for this item in Account No.: None
3. c) Source of funding for difference, if not fully budgeted: Depending on the option chosen, the deficit would have to be absorbed by the General Fund Revenues.
4. d) 5 year projection of operational cost of the project:

a. OPTION 1: If option 1 is selected, there is no net cost to the City after June 1st, 2009.
b. OPTION 2: If option 2 is selected, the net cost to the City is projected at $500,000 for the remainder of the current fiscal year and $1,100,000 for fiscal year 2010. Any future operational costs have not yet been determined.

5. e) Detail of additional staff requirements: No additional staff is required.

b. The agenda included the following attachments:
   i. Agenda Request Form 2-18-09 Item #14
   ii. Agenda Request Form 4-15-09 Item #9
c. Per the meeting minutes:
   i. City Manager Dodge explained he met with the Collective Bargaining Unit in trying to arrive at a conclusion regarding outsourcing or downsizing the Building Division. It was stated throughout the discussion with the Union that the City's goal was to balance the Building Department within the Building Department; that the City had accommodated the Union with as much information as was feasible, and paid $17,000 for an actuarial report to help them. The concessions the Union is offering would make significant changes, if approved by all of the general employees, but it would only assist with next year's budget.
   ii. Alan Eichenbaum, on behalf of the Federation of Public Employees, presented an offer to be considered; downsize the Building Department to 28 employees; reduce the multiplier calculation from 2.85 to 2.5; reduce the cost of living adjustment (COLA) for retirees from 3% to 2%; and freeze rates. Also, closing out the General Employees' Pension Plan and setting up a plan for new hires similar to a 401 K. Based upon those changes, there would be a savings for next fiscal year 2010, close to $8 million dollars.
   iii. City Manager Dodge gave a Power Point Presentation comparing outsourcing to downsizing of the Building Department. He stated it would be his recommendation to outsource the Building Department.
   iv. Vice Mayor Castillo asked City Manager Dodge what number the City afford to pay in salary and benefits to keep the Building Department employees and eliminate the current deficit. Vice Mayor suggested that the Union Representative and the budget people have a short meeting to discuss what that number would be and come back to the Commission with the answer.
   v. Daniel Rotstein, Human Resource/Risk Management Director, and Rene Gonzalez, Finance Director, recessed with the union representative to discuss.
   vi. Mr. Eichenbaum proposed, after the short meeting with Mr. Rotstein and Mr. Gonzalez, an additional 20% reduction in pay for the Building Department employees through the balance of the current year and not fill the four vacant positions. Also needed is the number that shows the difference from what the actuary says is required contributions with and without the changes. It is understood that for next year there may be additional concessions that will need to be made.

vii. Mr. Rotstein stated that the numbers Mr. Eichenbaum is using are from the actuarial report and are correct; the number he is asking for is $1,442,000.
viii. The Commission discussed with the Union how long it would take for them to meet with the General Employees to ratify their proposal and come back to the Commission with the results.
ix. The Commission and Union Representatives agreed on the June 3, 2009 Commission meeting to report the results of the ratification of the General Employee's Contract with all of the concessions included.
x. City Manager Dodge asked Mr. Eichenbaum to address the issue that was deferred last meeting, part of Option 3, which included the layoff of five clerical positions, as notice needed to be given, immediately.
xi. Mr. Eichenbaum answered in the affirmative to the layoff of the five clerical positions.

d. Voting Action:
   i. A motion was made by Vice Mayor Castillo, seconded by Commissioner Siple, to entertain, consistent with discussions between the labor and the City and the Unions, a proposal from Labor on June 3, 2009, and that, in the interim, Commission defer indefinitely the proposals for contracting out, preserving the integrity of the RFP. The motion passed by the following vote:

Aye: 5	Mayor Ortis, Vice Mayor Castillo, Commissioner McCluskey, Commissioner Shechter and Commissioner Siple
Nay: 0	

5. On June 3, 2009, the City Administration brought forward an Agenda Item with the following title:

   DISCUSSION AND POSSIBLE ACTION ON THE RESTRUCTURE AND/OR OUTSOURCE OF THE BUILDING DIVISION.

   a. The agenda item stated:
      i. The General Employees Union is scheduled to hold a contract vote for all General Employees on Monday June 1st. The vote is whether to ratify changes to their existing contract to include balancing out the Building Department.
      ii. If the vote passes, Commission will need to confirm the revised Building Department structure. If the vote fails, Commission will need to provide Administration with the appropriate direction.
      iii. a) Initial Cost: Will be determined once the City is advised of the results of the General Employees vote.
   b. The agenda included the following attachments:
      i. 1. Agenda Request Form 2-18-09 Item #14
      ii. 2. Agenda Request Form 4-15-09 Item #9
      iii. 3. Agenda Request Form 5-20-09, Item #SM-2
   c. Per the meeting minutes:

i. City Manager Dodge explained that, at the May 20th meeting, Commission instructed staff to work with the Federation of General Employees to try and find a solution to the deficit of the building department, not only for this current year, but next year, as well. The Federation went to their membership with contract amendments, and on Monday, June 1st, the membership did not ratify those contract amendments. Therefore, the only solution the City has, based on the projected deficit this year and next, is to recommend outsourcing the building department services.

ii. City Attorney Goren explained that there are three companies to be interviewed for outsourcing the building department by the Commission; CAP Government, Broward County Permitting, Licensing, and Consumer Protection Division, and Calvin, Giordano; each company will be given ten minutes for their presentation; and the Commission will rank each company 1 through 3, with 1, the most desirable; 3, the least desirable.

iii. CAP Government:
    1. Carlos Penin, founder and President of CAP Government, 2700 South Congress Parkway introduced staff members, Cos Tornese and Bob Trauman. Mr. Penin gave a brief history of the company and their experience.

iv. Broward County Permitting, Licensing, and Consumer Protection Division:
    1. Cynthia Chambers, Director of Broward County Department of Environmental Protection, Growth Management introduced staff members Greg Baker, Jack Fisher. A brief presentation was given.

v. Calvin, Giordano:
    1. Dennis Mele, representing Calvin, Giordano introduced George Keller and Phil Mastrosimone, and stated that Nova Engineering would also partner with Calvin, Giordano.
    2. Mr. Keller gave a brief summary of the history and experience between Calvin Giordano and Nova Engineering.

vi. City Attorney Goren stated for the record, the process was to allow each applicant to speak for ten minutes; anyone who was an applicant not speaking had the right to be in the room, as State Statutes allows.

vii. The three short-listed firms, CAP Government, Broward County, and Calvin-Giordano, gave presentations and responded to questions posed by the Mayor and Commissioners.

viii. Commission members individually ranked their choices from one to three, with one being the most desirable and three being the least desirable, on ranking sheet forms.

ix. The City Clerk tallied the scores of each Commissioner, and announced the results:
    1. Calvin-Giordano, 10;
    2. Broward County, 11, and
    3. CAP Government, 12

x. Calvin Giordano was awarded the outsourcing of the Building Department Function.

d. Voting Action:

i. A motion was made by Commissioner McCluskey, seconded by Commissioner Shechter, to interview the three top contenders for the outsourcing of the Building Department function. The motion passed by the following vote:

Aye: 4	Mayor Ortis, Vice Mayor Castillo, Commissioner McCluskey and Commissioner Shechter
Nay: 1	Commissioner Siple

ii. A motion was made by Vice Mayor Castillo, seconded by Commissioner McCluskey, to accept the tally. The motion passed by the following vote:

Aye: 4	Mayor Ortis, Vice Mayor Castillo, Commissioner McCluskey and Commissioner Shechter
Nay: 1	Commissioner Siple

6. On June 17, 2009, the City Administration brought forward an Agenda Item with the following title:

MOTION TO APPROVE THE AGREEMENT BETWEEN THE CITY OF PEMBROKE PINES AND CALVIN, GIORDANO & ASSOCIATES, INC., FOR PROFESSIONAL BUILDING DEPARTMENT SERVICES.

a. The agenda item stated:

i. Commission awarded RFP #FI-09-05 for professional building department services to Calvin, Giordano & Associates, Inc., on June 6, 2009.

ii. The agreement has been prepared by the City Attorney's office for approval.

iii. Motion to approve the agreement between the City of Pembroke Pines and Calvin, Giordano & Associates, Inc., for professional building department services.

iv. Financial Impact: See Agreement for financial impact. A zero cost contract to the City for Revenues. Page 6 Section 4.1.

b. The agenda included the following attachments:

i. 1. Building Department Services Agreement

ii. 2. Exhibit A of Agreement - RFP #FI-09-05

iii. 3. Exhibit B of Agreement - Submittal - Calvin, Giordano & Associates (not available on the internet)

iv. 4. Exhibit C of Agreement - Minutes/Agenda Item #14 dated 6-3-09

c. Per the meeting minutes:

i. Vice Mayor Castillo asked if the $300,000 dollars for rent and administrative fees were still in the contract with Calvin, Giordano.

ii. City Manager Dodge stated that it was in the contract.

iii. The following member of the public spoke:

            1. Jay Schwartz, 8310 NW 16 Street
    iv. Commissioner Siple asked on Page 5, at 2.6, as to what happens to current vehicles. Also, 2.6 sub-section 2, she asked who is going to be responsible for equipment and communication. Section 4.1 states all fees would be increased annually on July 1, 2011; will this automatically happen and the City would have no say as to what those numbers would go to and will they have to stick to the CPI. She questioned what happens if they move out.
    v. City Manager Dodge responded that the City would look at the inventory and see which vehicles could be disposed of and which would be the City's fleet. The equipment and communication devices will be at the vendor's expense; fees would be adjusted annually based on the CPI. The City is not recommending they move out; that will be an issue that would come back to the Commission for consideration.
d. Voting Action:
    i. A motion was made by Vice Mayor Castillo, seconded by Commissioner McCluskey, to approve Item 29. The motion passed by the following vote:

Aye: 5	Mayor Ortis, Vice Mayor Castillo, Commissioner Shechter, Commissioner McCluskey and Commissioner Siple
Nay: 0	

Summary of Contract Renewals and Amendments:

1. The Agreement that was approved on June 17, 2009, included:
    a. **Term:** An initial five (5) year term following the date of execution by the Parties.
    b. **Renewal:** This Agreement shall be renewed at the expiration of the initial term and annually thereafter unless notice of intent not to renew is provided in conformance with Section 12.10. The parties agree to furnish notice of intent not to renew this Agreement not less than one hundred eighty (180) days prior to the expiration of this Agreement. In the event that this Agreement is not renewed for any reason, CONTRACTOR shall continue to provide services under existing terms and conditions until a replacement contractor has been located and retained by the City.
    c. **Termination without cause:** This Agreement may be terminated by the CITY for any reason or no reason upon thirty (30) calendar days written notice to the CONTRACTOR. In the event of such termination, CONTRACTOR shall be entitled to receive compensation for any work, or capital investment completed pursuant to this Agreement to the satisfaction of the CITY up through the date of termination. Under no circumstances shall the CITY make payment for services that have not been performed.
    d. **Termination with cause:** This Agreement may be terminated by either party upon five (5) calendar days written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONTRACTOR abandons this Agreement or causes it to be terminated by the CITY, CONTRACTOR shall indemnify the CITY against any and all loss

pertaining to such termination, including, but not limited to reasonable costs incurred in transition to a replacement contractor.

2. The initial five year term of the agreement was for the period of July 1, 2009 to June 30, 2014.
3. On April 6, 2011, the City Commission approved the first amendment to the agreement between the City of Pembroke Pines and Calvin, Giordano & Associates, Inc., for professional Building Department services.
    a. The First Amendment provides for changes to the agreement including the "Legal Obligations" and "No Onsite Solicitation and Conflicts of Interest" sections.
4. Subsequently, the Second Amendment was presented to the City Commission on the Contract Database Report with the recommendation to renew and was renewed for the period of July 1, 2014 to June 30, 2015.
5. Furthermore, the agreement has been brought back to the Commission on the Contract Database Report and has been renewed annually, as summarized below:

Agreement	**Start**	**End**	**Notes**
Original Agreement	07/01/2009	06/30/2014	
1st Amendment	N/A	N/A	Amended Article 10 - Legal Obligations & Article 11 - Special Conditions
2nd Amendment	07/01/2014	06/30/2015	
3rd Amendment	07/01/2015	06/30/2016	
4th Amendment	07/01/2016	06/30/2017	Added new Public Records Language
5th Amendment	07/01/2017	06/30/2018	
6th Amendment	07/01/2018	06/30/2019	
7th Amendment	07/01/2019	06/30/2020	

6. On June 3, 2020, the City Administration presented an agenda item for the Department recommendations for the items listed on the Contracts Database Report, which included item (B) which was the recommendation to renew the Calvin, Giordano & Associates, Inc. - Professional Services Building Department Agreement.
    a. The agenda item stated:
        i. On July 1, 2009, the City entered into a Professional Services Agreement with Calvin Giordano & Associates, Inc. for an initial five (5) year period, commencing July 1, 2009 and expiring June 30, 2014.
        ii. The City of Pembroke Pines Public Services Department utilizes Calvin Giordano & Associates, Inc. to provide professional building department services.
        iii. Section 3.2 of the Original Agreement allows for additional one (1) year renewal terms upon mutual consent, evidenced by a written Amendment.
        iv. The Original Agreement has had seven amendments, including six renewals extending the term of the Original Agreement to June 30, 2020.
        v. The Public Services Department recommends that the City Commission approve this Eighth Amendment for the one (1) year renewal term commencing July 1, 2020 and ending June 30, 2021, as allowed by the agreement.
        vi. FINANCIAL IMPACT DETAIL:

a. Renewal Cost: None, this is a revenue based contract. CGA pays the City an annual Rent that is adjusted for a CPI, which is currently $177,765.61; and an annual Administrative Fee adjusted for CPI, which is currently $181,393.79. The City bills CGA for these charges on a monthly basis. In addition, the City shall receive 10% of the annual gross revenues collected in excess of $4,000,000, this is billed annually. See attached Building Revenue Recap for amounts collected to date.
b. Amount budgeted for this item in Account No: Amounts are budgeted in the following Revenue Accounts: Rental City Facilities 1-362030-6001; Administrative Fee 1-341310-800. The 10% of the gross revenues collected in excess of $4,000,000 is also coded as Rent.
c. Source of funding for difference, if not fully budgeted: Not Applicable
d. 5 year projection of the operational cost of the project - See attached Building Revenue Recap
e. Detail of additional staff requirements: Not Applicable

e. The agenda included the following attachments:
    i. 1. Contracts Database Report - June 3, 2020
    ii. 3. Calvin, Giordano & Associates, Inc - Building Department Services (All Backup)
f. Per the meeting minutes:
    i. A motion was made by Commissioner Good, Jr., seconded by Vice Mayor Siple, to approve section (B) of Consent Item 9 to approve the recommendation to renew the contract with Calvin Giordano & Associates, Inc. Professional Services Building Department; to approve the contract with the requirement that the City Manager negotiate with the vendor to achieve better revenue share for the City in terms that could be brought back to Commission later. The motion carried by the following vote.

Aye: 5	Mayor Ortis, Vice Mayor Siple, Commissioner Good Jr., Commissioner Schwartz, and Chanzes
Nay: 0	

7. On October 7, 2020, the City Administration brought forward an Agenda Item with the following title:

MOTION TO APPROVE THE NINTH AMENDMENT TO THE AGREEMENT BETWEEN CALVIN GIORDANO AND ASSOCIATES INC. AND THE CITY OF PEMBROKE PINES FOR BUILDING SERVICES FOR A FIVE-YEAR PERIOD BEGINNING JULY 1st 2021.

a. The agenda item stated:
    i. On July 1, 2009, the City entered into a Professional Services Agreement with Calvin Giordano & Associates, Inc. (CGA) for an initial five (5) year period, commencing July 1, 2009 and expiring June 30, 2014, with subsequent one (1) year renewals.

ii. On June 3, 2020, the City Commission approved the eighth Amendment for a one (1) year renewal term commencing July 1, 2020 and ending June 30, 2021, as allowed by the agreement.
iii. On June 3, 2020, the City Commission also gave direction to the City Manager to negotiate better terms in an effort to generate additional revenues for the City.
iv. This Ninth Amendment to the agreement includes the following negotiated changes:
    1. City would retain 11.5% of all building permit revenues, beginning from the first dollar received in building permit fees. No sales tax would be charged on the City's retention of building permit fees.
    2. City would continue to charge CGA both the contractual Administrative Fee and Rental Fee per the existing contract. Including applicable sales tax for the rental fee.
    3. City will be responsible for their check and credit card processing fees associated with the intake of the permit fees, planning and zoning fees, engineering fees, fire fees, CO fees and impact fees.
    4. The contract renewal shall be for an initial five (5) year period with one (1) year renewals similar to the existing contract.
    5. All remaining terms of the contract would remain in-tact, such as waiving 100% of City project permit fees.
v. As a result of these negotiated changes, the City will receive additional revenues of approximately $270,000 to $290,000 per year. This is also more beneficial to the City, in that we will start earning additional revenues beginning with the first dollar, rather than depending on revenues to reach $4 Million. See attached Financial Analysis comparing the current contract versus the new contract using the last 5 years.
vi. Request Commission approve the Ninth Amendment to the Agreement with Calvin Giordano & Associates Inc. for a 5-year period beginning July 1st, 2021.
vii. FINANCIAL IMPACT DETAIL:
    1. Renewal Cost: The City anticipates it will net an additional $270,000 to $290,000 per year under these contract terms. See attached Financial Analysis comparing the current contract versus the new contract using the last 5 years.
    2. Amount budgeted for this item in Account No: Amounts are budgeted in the following Revenue Accounts: Rental City Facilities 1-362030-6001; Administrative Fee 1-341310-800. Finance will create any additional accounts necessary for this new contract, if applicable.
    3. Source of funding for difference, if not fully budgeted: Not Applicable
    4. 5 year projection of the operational cost of the project - See attached Financial Analysis Contract Revenue Comparison.
    5. Detail of additional staff requirements: Not Applicable

b. The agenda included the following attachments:
    i. 1. Financial Analysis Contract Revenue Comparison

ii. 2. Calvin, Giordano & Associates, Inc. - 9th Amendment - Building Department Services- Vendor Executed
iii. 3. Letter from CGA - 09-17-2020
iv. 4. Calvin, Giordano & Associates, Inc - Building Department Services (All Backup)
v. 5. CGA Report Card no change since 6-3-20

c. Per the discussion:
   i. [00:44:53] >> [Mayor Ortis] Thank you. All right. We're on item 9, Commissioner Good.
   ii. [00:45:01] >> [Commissioner Good] Thank you, Mr. Mayor. If you will give me a moment.
   iii. [00:45:04] >> [Mayor Ortis] All right.
   iv. [00:45:19] >> [Commissioner Good] I gave you back the screen. So item number 9 is a motion to approve the ninth amounted to the agreement between Calvin Giordano and associates incorporated and the City of Pembroke Pines for building services for a five-year period beginning July 1, 2021.
   v. [00:45:37] >> [Commissioner Castillo] Castillo second.
   vi. [00:45:40] >> [Mayor Ortis] Castillo second. Go ahead, commissioner.
   vii. [00:45:43] >> [Commissioner Good] Thank you, Mr. Mayor. So I do want to thank my colleagues for recognizing when we originally took this item on June 3rd, that maybe there was an opportunity to have better terms in the agreement for the city, recognizing that there are going to be some complications in terms of our financials, and as we tighten our belt, we would expect others who are partners with the city to tighten their belts. So they did, and so there was conversation. Then we were presented with what the solution is. We did approve the eighth amendment and gave a request to the City manager to see if he could negotiate a better term of the eighth amendment, not bring back a five-year contract with some -- there are some negotiated stuff, which I don't know, though, that this has been fully vetted in terms of negotiating for five years I'm not very comfortable with it, and particularly when it's not going to start until June of 2021. I think this is a little bit premature. If there could be no solution and no better terms on the eighth amendment, then it should have just been left as we couldn't do any better and then brought back the ninth amendment as a one-year contract. But when we do a five-year contract, I think that begs for a formal bid process, whether they're the only people out in the game or not. We should at least give our residents, you know, some comfort to know that we're out there trying to look out for their best interests. But here we are asking for a five-year agreement with no competitive process, and I'm not in agreement with that. But I do have some questions to ask here. And the first thing is, is that in this agreement it speaks to the city will continue to charge CGA both the contractual and rental fee per the existing contract. So that means I guess five years we're going to lock into the same rental fee that we currently have today with Calvin, Giordano. The concern I have, first then and what I would have asked if we are doing long-term contract is why do we not put a CPI, attach a CPI to the rent. We have constant increases

in running our facility. We have constant increases everywhere. We do a CPI for everything. So they're going to get rent, since what they paid for a long time ago, I don't think it's changed, and I believe that there should be some sort of CPI associated with the rent agreements. As our costs increase, so should theirs. So that's one of the things that I would expect. The other thing is, is that it states all remaining terms of the contract will remain intact such as waiving 100% of city project permit fees. So that to me is rather kind of confusing when we are continuously approving projects, city projects where there's not only a owner of contingency for problems, but we always give permit fees, and I don't understand that. I don't understand. If we're constantly giving permit fees -- I mean we have one in here that we just approved tonight that said that there was going to be a contingency for permit fees. And if we're doing the permitting, I don't know why we're even putting them in these other items. I don't know. Maybe if that's truly the case, then we should not be putting anything in the permit fees for any of our projects. The other thing that I asked on the same item here is that I do believe there was some issues just recently issued through the state, maybe through the state statutes, where there may be some complications about giving the city free permitting. And I would ask the attorney if he is aware of any change in law that would have an impact to that.

viii. [00:50:46] >> [Mayor Ortis] All right. Before we get to the city attorney, Mr. Dodge, we had a discussion on this, you and I, and do you want to explain, first of all, you made some good points. Calvin Giordano has been a generous group for our city. You raise some valid points. Mr. Dodge, do you want to elaborate?

ix. [00:51:10] >> [City Manager Dodge] Yes, Mr. Mayor. First of all, I'd like to address a few of the points that Commissioner Good has raised. There is a CPI built into the contract, and regarding permit, that is technically a legal issue. I agree with your statement. That is probably why you see it in the bid as we're giving an allotment for permit. And I think that's a requirement of law. However, later on I believe there was a mechanism where we did not have to pay them. There are cities out there that sometimes just do a percentage of it, and that was one of the offers on the table. But we wanted to leave it at the 100%. If Mr. Goren can address that portion, I would appreciate it, regarding the free permits because I do not disagree with the commissioner on that.

x. [00:52:14] >> [Mayor Ortis] Mr. Goren.

xi. [00:52:15] >> [City Attorney Goren] Mayor, there is a statute governing contingencies which is something addressed by this contract, and the statute does prohibit a contingency for the contractor with this vendor with regard to this particular assignment, so if that bears relevance to how the contract was managed operationally with the dollars and cents of it, there cannot be a contingency fee for that particular item, and we can look further, but that's the general answer to the question.

xii. [00:52:45] >> [Mayor Ortis] All right. Commissioner Good.

xiii. [00:52:47] >> [Commissioner Good] Thank you, Mr. Mayor. So I again just reiterate that this five-year contract, no competition to be nine months in advance of expected start date is just a little bit too soon. I would ask that my colleagues support that we at least table this indefinitely until we can have a better discussion about the Calvin, Giordano contract for building services, and that would be my --

xiv. [00:53:29] >> [City Manager Dodge] Mr. Mayor.

xv. [00:53:30] >> [Mayor Ortis] Go ahead, Mr. Dodge.

xvi. [00:53:31] >> [City Manager Dodge] Yes. We do have a requirement by our code that we have to give at least six months' notice to the commission for either the renewal for the one-year extension either to extend it for that year under the same terms and conditions or you could reject and it go out for bid. So we cannot delay this indefinitely because we need a time frame that in the commission decides that they wish to rebid it, we need that window of opportunity to do the bid specifications, send everything out for review to have something in place well before this amendment expires. Number two, the direction that was given to staff was, in fact, to see if we would have an opportunity with some of our contractors to see if there were some savings that would be available. In our discussions with Mr. Giordano, and I believe he's online and he can discuss those things with you, both Lisa Chong and myself and staff, we did work with him, and basically the response was if they were able to move into a five-year extension, you might say, to this contract, there could be additional savings to the city. And as you'll see in the backup, as moving into a five-year contract, there is about a 270, 280,000 dollars additional savings to the city for that renewal purpose. But once again, if the commission that has to direct us in which way you would like to proceed, either renew the agreement as-is for one additional year with no changes or having negotiated the longer term, or the other thing is just make a decision that you want to go out for bid and do that, but we have to make some direction by at least the next meeting or no later than the first, I think it would have to be the next meeting to make that decision.

xvii. [00:55:59] >> [Mayor Ortis] All right. Commissioner good, did you have a motion?

xviii. [00:56:03] >> [Commissioner Good] Mr. Mayor, if I may ask, then, are you saying, Mr. Manager, that if we just wanted a one-year contract and let it just go year to year, that this savings would not be afforded to us? The only way that it would be afforded to us is if we get into a five-year contract?

xix. [00:56:25] >> [City Manager Dodge] I would like, Mr. Mayor, I would like Mr. Giordano to respond to that. I'm not sure if there would be some savings, but they certainly would be of the magnitude that we currently have in.

xx. [00:56:43] >> [Mayor Ortis] Mr. Giordano, are you on the line?

xxi. [00:56:46] >> [Chris Giordano] Yes, sir, I am. Thank you very much, mayor, Vice Mayor, commissioners and staff. Yes, that is correct. We did extend greater savings duty five-year extension. The initial negotiations that we were talking about a one-year extension there would be a savings but not have that magnitude. To go over a couple of the other it's there is a rent and admin fee, both of which have a CPI increase and they have gone up every year based on the CPI, some years more significant due to that CPI. Those current amounts are right around $170,000 each that we remit back to the city on top of that, that increases every year. On top that of that would be the $280,000 savings per year for all five years on top of the rent and admin that were being paid each year, and again each one of those is $170,000 each on their own.

xxii. [00:57:37] >> [Mayor Ortis] Mr. Good.

xxiii. [00:57:38] >> [Commissioner Good] Thank you. And I recognize that, but we're talking about I guess the average is what I'm looking at is about $6 million or $6.5 million, close to $7 million a year in gross revenues, and we're getting $170,000 back. Is that what I understand?

xxiv. [00:57:59] >> [Chris Giordano] No, sir. The $6.6 million is the total taken in by the city. You would reduce that by the amount going to the $761,000 plus $170,000 plus $73,000 plus the $900,000 plus the $300,000.

xxv. [00:58:17] >> [Commissioner Good] So again my concern is a five-year contract. A one-year contract I am much more comfortable with, and I don't know why a five-year versus a one-year would change the ability to save. I would need to understand that. Maybe that's the reason why I'm asking to table it, because I don't quite understand that kind of mathematics. In regards to the fact that there is no change in the services that you're doing, there's no change in the revenue stream, there's no change in the expenses, so, you know, why would a five-year be more advantageous than a one-year?

xxvi. [00:59:05] >> [Mayor Ortis] There's' motion to table. Is there a second?

xxvii. [00:59:10] >> [Vice Mayor Schwartz] I'll second the motion, mayor. This is Vice Mayor Schwartz.

xxviii. [00:59:14] >> [Mayor Ortis] Okay. There's a second to the motion for tabling. City clerk, call the rolled.

xxix. [00:59:20] >> [City Clerk Graham] Motion to table?

xxx. [00:59:21] >> [Mayor Ortis] Yes.

1. Voting Action:

Aye: 4	Commissioner Good, Vice Mayor Schwartz, Commissioner Siple, Commissioner Castillo.
Nay: 1	Mayor Ortis.

xxxi. [00:59:36] >> [City Clerk Graham] Motion passes.

xxxii. [00:59:38] >> [Mayor Ortis] Okay. Motion to table has passed. Thank you all. All right. We're on item number 13. Commissioner Good.

xxxiii. [00:59:47] >> [Commissioner Good] Thank you, Mr. Mayor. Before we move on -

xxxiv. [00:59:51] >> [Commissioner Siple] Mayor. Commissioner Siple?

xxxv. [00:59:54] >> [Mayor Ortis] Go ahead.

xxxvi. [00:59:55] >> [Commissioner Siple] Thank you, mayor. On this tabling issue, the item that we just tabled, mayor, because time does seem to be important in this particular case based upon even what Mr. Dodge, the city manager, said about the requirement for any types of notifications or anything look that. Are we looking at a -- I would ask my colleague, Commissioner Good, who made the motion to table, are we looking at some time as well given the necessity for that?

xxxvii. [01:00:27] >> [Mayor Ortis] Well, commissioner Siple, it wasn't included in motion. Right now it's tabled until somebody brings it off the table. City attorney, am I correct?

xxxviii. [01:00:38] >> [City Attorney Goren] If I may I quickly respond, Parliamentary-wise you are correct. The item has been tabled to a time uncertain, it's tabled until removed by commissioner.

xxxix. [01:00:49] >> [Commissioner Castillo] Point order. Castillo.

xl. [01:00:50] >> [Mayor Ortis] Commissioner Castillo, go ahead.

xli. [01:00:51] >> [Commissioner Castillo] Perhaps it was my misunderstanding, and if so we have to vote again, but my understanding was that – my understanding was that the motion to defer was until the next meeting in line with what the city manager said.

xlii. [01:01:10] >> [Mayor Ortis] Commissioner Castillo, we did not defer. We tabled. Your vote was to table. That's different than deferral. Okay.

xliii. [01:01:18] >> [Commissioner Castillo] So, tabling for the next meeting?

xliv. [01:01:20] >> [Mayor Ortis] No. There was no time certain. That's why I'm telling you. It's on the table until somebody takes it off. That's what the city attorney just concurred. So the point of order is moot. City attorney, am I correct?

xlv. [01:01:33] >> [City Attorney Goren] At the moment you are, mayor.

xlvi. [01:01:34] >> [City Manager Dodge] Mr. Mayor.

xlvii. [01:01:35] >> [Mayor Ortis] Yes, Mr. Dodge.

xlviii. [01:01:36] >> [City Manager Dodge] Mr. Mayor, the issue I have is that we would be in, I would assume, in violation of our own processes for renewal of agreements. There is no way, if we table this indefinitely, that we could advertise if that amendment to extend it one year did not pass. Therefore, we're going to run into a situation that you would probably have to extend that agreement even further to give us an opportunity to put together a bid package to do that. So I would suggest, if that is the desire, that perhaps we have another discussion on it, try to get the answers to Mr. Good's questions so that it can be brought back for reconsideration. But I don't have the authority to bring it off the table, and if it sits there, it's going to become a strategic issue for having these services, you know, when the contract expires on June 30th.

xlix. [01:02:49] >> [Commissioner Castillo] Mayor.

l. [01:02:51] >> [Commissioner Good] If I may speak, Mr. Mayor.

li. [01:02:53] >> [Mayor Ortis] Go ahead, Commissioner Good.

lii. [01:02:56] >> [Commissioner Good] One of the things I was going to ask before we moved on was that the city manager provides I was white paper to explain what the value of this being a five-year contract no-bid contract. And why -- and what is the mathematics of the savings of a year to year versus a five-year.

liii. [01:03:16] >> [Mayor Ortis] Mr. Dodge.
liv. [01:03:17] >> [City Manager Dodge] We can do that, and we'll work on getting it as quickly as possible, if not by the next meeting, the first meeting in November.
lv. [01:03:24] >> [Commissioner Castillo] Mr. Mayor, Castillo.
lvi. [01:03:26] >> [Mayor Ortis] Yes, Commissioner Castillo.
lvii. [01:03:27] >> [Commissioner Castillo] A question for the city attorney.
lviii. [01:03:32] >> [Mayor Ortis] Go ahead.
lix. [01:03:33] >> [Commissioner Castillo] We have tabled this item.
lx. [01:03:40] >> [City Attorney Goren] You have.
lxi. [01:03:41] >> [Commissioner Castillo] What is the procedure in order to make sure that this item gets heard at the next meeting and no later than the next meeting? Is it that we have to change our vote? Do I as an individual commissioner need to pull it off the table and make that clarification? What is the procedure? What is the remedy to fix the problem that we're not going to hear this at the next meeting?
lxii. [01:04:04] >> [City Attorney Goren] Mayor, if I may respond to the commissioner.
lxiii. [01:04:08] >> [Mayor Ortis] Mr. Goren.
lxiv. [01:04:09] >> [City Attorney Goren] Thank you. One option that you have is a motion to reconsider the tabling to clarify if it is your intention to a time certain versus a no time certain. That's one option. You could do that this evening, do a motion for reconsideration on it, the meeting ends or at the next meeting. If that's not the wish of the commission as a majority, then the answer is that any one of the commissioners could add an item to the next agenda which would actually make a motion to remove it from the table and to reconsider it.
lxv. [01:04:37] >> [Commissioner Castillo] I would like to make a motion to reconsider the item, ensuring that it gets on the next agenda.
lxvi. [01:04:44] >> [Mayor Ortis] Is there a second to that? Is there a second to that? I'll second the motion. Okay. Discussion and reconsideration of the table.
lxvii. [01:04:59] >> [Commissioner Good] Yes, Mr. Mayor.
lxviii. [01:05:00] >> [Mayor Ortis] Commissioner Good.
lxix. [01:05:01] >> [Commissioner Good] I'd just like to reiterate I would like to make certain that staff has the appropriate time. As the city manager has said he is going to try to get the white paper with the explanation for the next meeting or certainly before – by the November -- first meeting in November so I'd like to give the city manager an opportunity to do that so that we can have a fair opportunity to evaluate this.
lxx. [01:05:25] >> [Mayor Ortis] All right. The motion is to reconsider off the table so they come back to us for the next meeting. Is everybody clear on that? Call the roll, city clerk.

1. Voting Action:

Aye: 3	Commissioner Castillo, Mayor Ortis, Commissioner Siple
Nay: 2	Commissioner Good, Vice Mayor Schwartz

lxxi. [01:05:54] >> [Mayor Ortis] The motion passes for reconsideration at the next meeting.

Explanation as to why the 9th Amendment is being brought to Commission for Direction at this time:

1. On June 3, 2020, the City Administration presented an agenda item for the Department recommendations for the items listed on the Contracts Database Report, which included item (B) which was the recommendation to renew the Calvin, Giordano & Associates, Inc. - Professional Services Building Department Agreement.
2. A motion was made by Commissioner Good, Jr., seconded by Vice Mayor Siple, to approve section (B) of Consent Item 9 to approve the recommendation to renew the contract with Calvin Giordano & Associates, Inc. Professional Services Building Department; to approve the contract with the requirement that the City Manager negotiate with the vendor to achieve better revenue share for the City in terms that could be brought back to Commission later. The motion carried by the following vote.
3. As a result, the 8th Amendment was executed to renew the agreement for an additional one year term commencing on July 1, 2020 and terminating on July 1, 2021. The amendment also:
    a. Amended Section 4.1 and 4.3 of Article 4 entitled "Payment"
    b. Amended Section 5.2 of Article 5 entitled "Local Office Requirements"
    c. Addition of Section 9.3 of Article 9 entitled "Indemnity and Liens"
    d. Addition of Section 12.14 entitled "Non-Discrimination & Equal Opportunity Employment"
    e. Addition of Section 12.15 entitled "Scrutinized Companies"
4. Pursuant to Section 3.2 of the Original Agreement, "this Agreement shall be renewed at the expiration of the initial term and annually thereafter unless notice of intent not to renew is provided in conformance with Section 12.10. The parties agree to furnish notice of intent not to renew this Agreement not less than one hundred eighty (180) days prior to the expiration of this Agreement. In the event that this Agreement is not renewed for any reason, CONTRACTOR shall continue to provide services under existing terms and conditions until a replacement contractor has been located and retained by the City."
    a. Note: Pursuant to Section 3.3 of the Original Agreement, "this Agreement may be terminated by the CITY for any reason or no reason upon thirty (30) calendar days written notice to the CONTRACTOR. In the event of such termination, CONTRACTOR shall be entitled to receive compensation for any work, or capital investment completed pursuant to this Agreement to the satisfaction of the CITY up through the date of termination. Under no circumstances shall the CITY make payment for services that have not been performed."
5. Pursuant to § 35.29(F) of the City's Code of Ordinances, "City Commission notification. The City Manager, or his or her designee, shall notify the Commission, in writing, at least three months in advance of the expiration, renewal, automatic renewal or extension date, and shall provide a copy of the contract or agreement and a vendor performance report card contracts or agreements that initially required the City Commission's approval as defined in § 35.21."

6. In addition, on May 17, 2017, the City Commission approved Commissioner Schwartz' item to direct the City Manager to place all contracts from the contract database on consent agendas as they come up for contractual term renewal so that city commission affirms direction to administration whether to renew or to go out to bid.
7. Since the 8th Amendment is set to expire on July 1, 2021 and the agreement states that it will renew unless notice of intent not to renew is provided not less than one hundred eighty (180) days prior to the expiration of this Agreement, the City would need to issue the Notice of Intent not to renew by January 2, 2021, if the City did not intend to renew. Furthermore, since the City's Code of Ordinances states that the City Manager, or his or her designee, shall notify the Commission, in writing, at least three months in advance of the expiration, renewal, automatic renewal or extension date, and shall provide a copy of the contract or agreement and a vendor performance report card contracts or agreements that initially required the City Commission's approval, the ninth amendment should be brought to Commission approximately by October 4, 2020. As a result, it was presented to the City Commission on October 7, 2020.

Explanation of Permit Fees for City Projects:

1. FL Statute 218.80 "Public Bid Disclosure Act", as amended on July 1, 2020 by HB 279, states that:
    a. It is the intent of the Legislature that a local governmental entity shall disclose all of the local governmental entity's permits or fees, including, but not limited to, all license fees, permit fees, impact fees, or inspection fees, payable by the contractor to the unit of government that issued the bidding documents or other request for proposal, unless such permits or fees are disclosed in the bidding documents or other request for proposal for the project at the time the project was let for bid. It is further the intent of the Legislature to prohibit local governments from halting construction to collect any undisclosed permits or fees which were not disclosed or included in the bidding documents or other request for proposal for the project at the time the project was let for bid.
    b. Bidding documents or other request for proposal issued for bids by a local governmental entity, or any public contract entered into between a local governmental entity and a contractor shall disclose each permit or fee which the contractor will have to pay before or during construction, ~~and shall include~~ the dollar amount or the percentage method or the unit method of all permits or fees which may be required by the local government as a part of the contract and a listing of all other governmental entities that may have additional permits or fees generated by the project. If the request for proposal does not require the response to include a final fixed price, the local governmental entity is not required to disclose any fees or assessments in the request for proposal. However, at least 10 days prior to requiring the contractor to submit a final fixed price for the project, the local governmental entity shall make the disclosures required in this section. Any of the local governmental entity's permits or fees that ~~which~~ are not disclosed in the bidding documents, other request for proposal, or a contract between a local government and a contractor shall not be assessed or collected after the contract is let. No local government shall halt construction under any public contract or delay

completion of the contract in order to collect any permits or fees which were not provided for or specified in the bidding documents, other request for proposal, or the contract.

   c. This section does not require disclosure in the bidding documents of any permits or fees imposed as a result of a change order or a modification to the contract. The local government shall disclose all permits or fees imposed as a result of a change order or a modification to the contract prior to the date the contractor is required to submit a price for the change order or modification.

2. As a result, the City includes language in the bid package that states the different permit fees (which may include but is not limited to the Building Department, Engineering Department, South Broward Drainage District, Florida Department of Environmental Protection, etc.) that are applicable to the project and also includes the allowance in the Agenda Request Form (ARF) for the City Commission's approval. For most projects, the permitting fees are waived by the Building Department and the Engineering Department, however external entities such as the permit fees from external entities such as the South Broward Drainage District and Florida Department of Environmental Protection are not waived and are paid out of the approved Permit Allowance. Therefore, there are instances in which the Permit Allowance is not utilized for projects, in which the City will retain the funds.
3. The Procurement Department will work with the Contracts Division to revise the language in the bid packages and contracts to reflect that any applicable permit fees will be paid out of the City's Owner's Contingency for a given project in lieu of a separate permit allowance.

NEGOTIATIONS

A New Approach to Contracts

by David Frydlinger , Oliver Hart and Kate Vitasek

From the September–October 2019 Issue

When Dell originally selected FedEx, in 2005, to handle all aspects of its hardware return-and-repair process, the companies drew up a traditional supplier contract. The 100-page-plus document was filled with "supplier shall" statements that detailed FedEx's obligations and outlined dozens of metrics for how Dell would measure success. For nearly a decade, FedEx met all its contractual obligations—but neither party was happy in the relationship. Dell felt that FedEx was not proactive in driving continuous improvement and innovative solutions; FedEx was frustrated by onerous requirements that wasted resources and forced it to operate within a restrictive statement of work. Dell's attempts to lower costs, including bidding out the work three times during the eight-year relationship, ate into FedEx's profits.

By the eighth year, the parties were at the breaking point. Each lacked trust and confidence in the other, yet neither could afford to end the relationship. Dell's cost of switching to another company would be high, and FedEx would have trouble replacing the revenue and profits the contract generated. It was a lose-lose scenario.

Unfortunately, this story is not unique. Companies understand that their suppliers are critical partners in lowering costs, increasing quality, and driving innovation, and leaders routinely talk about the need for strategic relationships with shared goals and risks. But when contract negotiations begin, they default to an adversarial mindset and a transactional contracting approach. They agonize over every conceivable scenario and then try to put everything in black-and-white. A variety of contractual clauses—such as "termination for convenience," which grants one party total freedom to end the contract after a specified period—are used to try to gain the upper hand. However, these tactics not only confer a false sense of security (because both firms' switching costs are too high to actually invoke the clauses) but also foster negative behaviors that undermine the relationship and the contract itself.

We argue that the remedy is to adopt a totally different kind of arrangement: a *formal relational contract* that specifies mutual goals and establishes governance structures to keep the parties' expectations and interests aligned over the long term. Designed from the outset to foster trust and collaboration, this legally enforceable contract is especially useful for highly complex relationships in which it is impossible to predict every what-if scenario. These include complicated outsourcing and purchasing arrangements, strategic alliances, joint ventures, franchises, public-private partnerships, major construction projects, and collective bargaining agreements. A growing number of large organizations—such as the Canadian government, Dell, Intel, AstraZeneca, and the Swedish telecommunications firm Telia—are successfully using this approach.

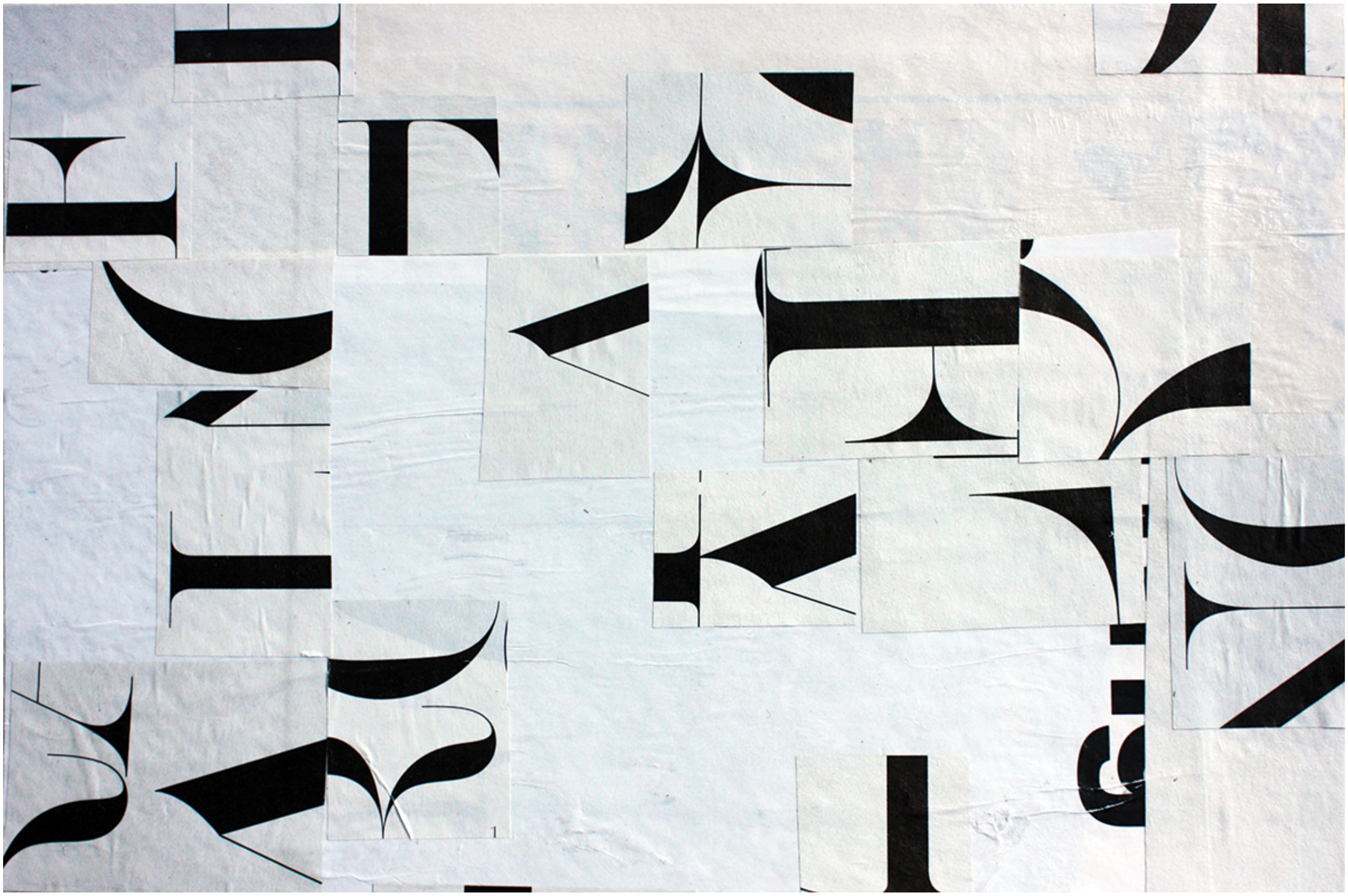
In this article, we look at the theoretical underpinnings of formal relational contracts and lay out a five-step methodology for negotiating them.

Hold-Ups, Incomplete Contracts, and Shading

Companies have traditionally used contracts as protection against the possibility that one party will abuse its power to extract benefits at the expense of the other—for example, by unilaterally raising or lowering prices, changing delivery dates, or requiring more-onerous employment terms. Economists call this the *hold-up problem*: the fear that one party will be held up by the other. The fact that virtually all contracts contain gaps, omissions, and ambiguities—despite companies' best efforts to anticipate every scenario—only exacerbates hold-up behavior.

Leaders employ a range of tactics to try to ensure that they are not taken advantage of by a powerful partner. These include contracting with multiple suppliers, forcing suppliers to lock in prices, using termination-for-convenience clauses, or obligating suppliers to cover activities that might arise after the initial contracting phase. Some companies go so far as to install a "shadow organization" to micromanage the supplier.

Early research by one of us (Oliver, who won the 2016 Nobel Prize in economics for his work on contracts) predicted that in response to the combined problems of hold-ups and incomplete contracts, companies are very likely to make distorted investments that produce poor outcomes. Using multiple suppliers instead of only one, for example, increases costs; so does operating a shadow organization. Termination-for-convenience clauses create perverse incentives for suppliers to not invest in buyer relationships. "A 60-day termination for convenience translates to a 60-day contract," one CFO at a supplier told us. "It would be against our fiduciary responsibility to our shareholders to invest in any program for a client with a 60-day termination clause that required longer than two months to generate a return." The implications for innovation are obvious. "Buyers are crazy to expect us to invest in innovation if they do the math."


CECIL TOUCHON/COURTESY OF SEARS-PEYTON GALLERY, NEW YORK

In 2008, Oliver, together with economic theorist John Moore, revisited his work on contracts. They realized that an equally important problem is *shading*, a retaliatory behavior in which one party stops cooperating, ceases to be proactive, or makes countermoves. Shading happens when a party isn't getting the outcome it expected from the deal and feels the other party is to blame or has not acted reasonably to mitigate the losses. The aggrieved party often cuts back on performance in subtle ways, sometimes even unconsciously, to compensate.

Imagine that a supplier of engineering services submits a proposal in a competitive bidding process and wins the contract. If demand is lower during the term of the contract than the buyer stated in the RFP or the scope expands in an unanticipated area, the supplier's profit will take a hit. If the buyer refuses to adjust the supplier's fee or the statement of work, the supplier may try to recoup losses by, for example, replacing the expensive A team it currently has on the project with its less costly C team. In long-term, complex deals, shading can be so pervasive that the tit-for-tat behavior becomes a death spiral. Oliver and Moore's expanded theory focuses on contracts as reference points, a new perspective that emphasizes the need for mechanisms to continually align expectations—or update reference points—as unanticipated events occur and needs change over time.

A New Approach

At the same time that Oliver and Moore were looking at the contracting problem from an economics perspective, University of Tennessee researchers (including two of us, Kate and David) were working with companies to come up with a new approach that would produce healthier and more sustainable partnerships. Their efforts led to the vested methodology for creating formal relational contracts—a process that establishes a "what's in it for we" partnership mentality. (It's called vested because the parties have a vested interest in each other's success.) Written contracts that are legally enforceable (which is why we call them formal), they include many components of a traditional contract but also contain relationship-building elements such as a shared vision, guiding principles, and robust governance structures to keep the parties' expectations and interests aligned.

Relational contracts that rely on parties' making choices in their mutual self-interest are nothing new, of course. The benefits of informal "handshake" deals have been studied and promoted over the decades; legal scholars Stewart Macaulay and Ian Macneil were early advocates in the 1960s. Japanese *keiretsu*, an arrangement in which buyers form close associations with (and often own stakes in) suppliers, is a type of relational contract (see "The New, Improved Keiretsu," HBR, September 2013).

Perhaps unsurprisingly, most companies—and their legal counsels in particular—are uncomfortable with informal handshake deals, especially when the stakes are high. In fact, many companies now believe that even the vaunted keiretsu model, which Toyota and Nissan, among others, used so successfully, ties up capital and limits flexibility. The formal relational contract addresses these deficiencies.

Shading happens when one party isn't getting the outcome it expected.

When Dell and FedEx reached their breaking point, they chose to abandon their existing contracting process and create a formal relational contract that specified desired outcomes and defined relationship-management processes at the operational, management, and executive levels. In the first two years, Dell and FedEx were able to reduce costs by 42%, scrap by 67%, and defective parts per million to record-low levels. Both companies now consider the contracting approach a best practice and have applied it in other relationships.

To date, 57 companies have employed the vested methodology. (David and Kate have consulted on many of these projects, including several mentioned in this article.) Results have not been tracked for all of them, but many have told us that they and their partners are happy with the approach and cite benefits including cost savings, improved profitability, higher levels of service, and a better relationship.

Putting It into Practice

Before jumping into a formal relational contract process, companies must determine whether it is right for them. Some relationships, such as those involving the purchase of commodity products and services, are truly transactional and only need traditional contracts. But many organizations require long-term, complex relationships for which the vested methodology is well suited.

Which Type of Contract Is Right for You?

Buyers must consider three key factors when deciding what type of contracting arrangement is right for each supplier relationship. They should analyze their dependency on the particular supplier, the strategic value of its product, and the impact of nonperformance on a buyer's operations.

	TRANSACTIONAL CONTRACT	F R C

A case in point is Vancouver Island Health Authority and South Island Hospitalists, a partnership of administrators and doctors who work together to provide inpatient care for patients with the most complex medical issues in British Columbia. The entities decided to explore relational contracting in 2016, two years after their conventional contract had expired and countless hours of contentious negotiations had failed to

BUYER'S DEPENDENCY ON THE SUPPLIER		
Switching costs:	—	—
Overall cost to switch suppliers	Low	M hi
Physical asset specificity (location, machinery, processes)	Low	M hi
Skill level of supplier's personnel	Unskilled to semiskilled	Sl pr
Level of integration required with supplier's systems or processes	None to low	M hi
What is the availability of substitutes in the marketplace?	—	—
Supplier services or products	Plentiful	M sc
Qualified and skilled personnel	Plentiful	M sc
Technology	Off-the-shelf	C

STRATEGIC IMPACT		
Is the supplier's product or service a strategic differentiator for the buyer?	No	Ye
Does the buyer benefit from access to the supplier's critical systems and processes (and vice versa)?	Very little	M ve

replace it. Working with the University of Tennessee (including Kate), they embarked on the five-step process.

Step 1: Lay the foundation.

The primary goal of Step 1 is to establish a partnership mentality. Both parties must make a conscious effort to create an environment of trust—one in which they are transparent about their high-level aspirations, specific goals, and concerns. And if their previous contracting process led to distrust and a vicious cycle of shading, they should reflect on how and why that happened.

At Island Health and South Island, the parties tossed out the old contract and chartered a team of 12 administrators and 12 hospitalists to design a formal relational contract. Each individual worked with a counterpart from the other organization to establish connections in key areas. For example, Spencer Cleave, a hospitalist from South Island, and Kim Kerrone, Island Health's vice president for finance, legal, and risk, led a small group focused on rethinking the conventional fee-for-billable-service-hour payment structure.

"We were no longer interested in just developing a contract," recalled Jean Maskey, a hospitalist at South Island who coheaded[7]

RISKS DUE TO SUPPLIER NONPERFORMANCE		
Lost profits	None to low	M hi
Damage to the buyer's customer or brand experience	None to low	M hi
Damage to the buyer's employee experience	None to low	M hi
Regulatory compliance penalties	None to low	M hi
Impact on demand management	None	M hi

Note: This table is based on material presented in *Strategic Sourcing in the New Economy* (Palgrave Macmillan, 2016).

the contracting team, "but in building excellent relationships at multiple levels that would allow all of us to be leaders in Canadian health care, whether as administrators or hospitalists."

Step 2: Co-create a shared vision and objectives.

To keep expectations aligned in a complex and changing environment, both parties—not just the one with greater power—need to explain their vision and goals for the relationship.

The Island Health and South Island team held a three-day off-site to craft their vision: "Together, we are a team that celebrates and advances excellence in care for our patients and ourselves through shared responsibility, collaborative innovation, mutual understanding, and the courage to act, in a safe and supportive environment." They further established a set of four desired outcomes that flowed from the shared vision:

- Excellence in patient care (develop a formal and robust quality structure)
- A sustainable and resilient hospitalist service (strengthen recruitment, mentorship, and retention processes; create an efficient and flexible hospitalist scheduling model; clearly define hospitalist services and workload; develop stronger interdepartmental working relationships; and train and develop current and future hospitalist leaders)
- A strong partnership (continue to build a healthy relationship between Island Health and South Island)
- A best-value hospitalist service (proactively manage the budget, optimize billing, review workload, and increase operational efficiencies)

In a subsequent workshop the team delved deeper, crafting four high-level desired outcomes, seven goals, and 22 tactical and measurable objectives. One objective, for example, called for improving physicians' billing to the provincial Medical Services Plan (MSP) for cost recovery for the hospitalist fees. The parties created a joint project collaboratively working with billing support and IT technologists to develop an electronic billing program to maximize billing submissions, ultimately improving cost recovery from 87% to 100%.

Step 3: Adopt guiding principles.

Value-eroding friction and shading occur because one or both parties feel unfairly treated. This risk is highest when there are many unknowns about what will occur after the contract is signed. In Step 3, parties commit to six guiding principles that contractually prohibit opportunistic tit-for-tat moves.

The six principles—reciprocity, autonomy, honesty, loyalty, equity, and integrity—form the basis for all contracts using the vested methodology and provide a framework for resolving potential misalignments when unforeseen circumstances occur.

Drafting Your Guiding Principles

Formal relational contracts are built on a foundation of trust and are shaped by a shared vision and six universal guiding principles. The wording crafted by Island Health and South Island, which they embedded in the preamble of their contract, can be used by other companies as a model for drafting their own guiding principles.

Shared Vision

- Together, we are a team that celebrates and advances excellence in care for our patients and ourselves through shared responsibility, collaborative

Island Health and South Island formally embedded their interpretations of the principles in the preamble of their contract. Each was crafted to establish a new norm for the partnership. Under "reciprocity," for example, they highlighted the need to "conduct ourselves in the spirit of achieving mutual benefit and understanding." Under "equity," they acknowledged the unavoidable imbalances that arise in contracts: "We are committed to fairness, which does not always mean equality. We will make decisions based on a balanced assessment of needs, risks, and resources."

innovation, mutual understanding, and the courage to act, in a safe and supportive environment.

- We will be recognized leaders in health care.
- We will achieve this vision by building relationships grounded in trust and respect, and anchored in the following Guiding Principles and Intended Behaviors.

Guiding Principles & Intended Behaviors

- **Reciprocity:** We conduct ourselves in the spirit of achieving mutual benefit and understanding. We recognize that this requires ongoing give-and-take. We each will bring unique strengths and resources that will enable us to overcome our challenges and celebrate our successes.
- **Autonomy:** We give each other the freedom to manage and make decisions within the framework of our unique skills, training, and professional responsibilities. We individually commit to make decisions and take actions that respect and strengthen the collective interest to achieve our Shared Vision.
- **Honesty:** We will be truthful and authentic even when that makes us vulnerable or uncomfortable. This includes honesty about facts, unknowns, feelings, intentions, perceptions, and preferred outcomes.

Again, it's important to note that these guiding principles have teeth. Although the contractual language may be vague, courts are obligated to interpret it should there be a dispute. Indeed, the Canadian supreme court recently took up a case in which a franchisee alleged that it was not being treated fairly by the franchise owner. And therein lies the beauty of the formal relational contract. Few companies will want to risk an expensive court case for breaching the guiding principles; thus the contract becomes a deterrent against counterproductive behavior.

Step 4: Align expectations and interests.

Having set the foundation for the relationship in the first three steps, parties hammer out the terms of "the deal"—for example, responsibilities, pricing, and metrics. It is crucial that all terms and conditions of the formal relational contract are aligned with the guiding principles. With the right mindset, the development of the contract becomes a joint problem-solving exercise rather than an adversarial contest.

- **Loyalty:** We are committed to our relationship. We will value each other's interests as we value our own. Standing together through adversity, we will achieve our Shared Vision.
- **Equity:** We are committed to fairness, which does not always mean equality. We will make decisions based on a balanced assessment of needs, risks, and resources.
- **Integrity:** Our actions will be intentionally consistent with our words and agreements. Decisions will not be made arbitrarily but will align with our Shared Vision and Guiding Principles. Our collective words and actions will be for the greater good of the relationship and the provision of patient-centered care.

CECIL TOUCHON/COURTESY OF SEARS-PEYTON GALLERY, NEW YORK

About the art: Artist Cecil Touchon's collages of sliced and rearranged letterforms create "subliteral poems." In his Typographic Abstraction series, the compositions transform letters from a symbol of written language into a kind of visual architecture.

Consider how the Island Health administrators and South Island hospitalists tackled pricing, which had always been their sticking point. Historically, the two parties had operated under a shroud of opaqueness. For example, Island Health never shared the budget with the hospitalists. And South Island's less-than-optimal reporting processes meant inevitable bickering over billable hours.

Kim Kerrone, of Island Health, described how the vested methodology broke the impasse. "We consciously approached the economics of the relationship with full transparency and a problem-solving mentality instead of a negotiations mentality," she told us. "We put everything on the table, and we challenged the contracting team to figure out ways to work with the money we've got."

The parties ultimately came up with an alternative to the standard fee-for-billable-hours method. They designed a hybrid pricing model with a combination of fixed and variable rates, coupled with incentives to improve efficiencies. The model also gave the hospitalists autonomy in scheduling. After all, the team realized, who better to optimize the scheduling for superior patient care than the doctors on the front lines? Under the new pricing model, when the inpatient population is low, the hospitalists can opt to take time off and save Island Health money. When the population is high, they manage their hours in a way that's within the budget and optimizes patient care. South Island has the opportunity to earn incentives if they improve efficiency and billing, which they can invest in research and quality-of-care initiatives they are passionate about. Both parties felt that the new model was a win-win solution that would have been unachievable under previous contracts.

Step 5: Stay aligned.

In this step, contracting parties go beyond crafting the terms of the agreement and establish governance mechanisms that are formally embedded in the contract.

Island Health and South Island created four joint governance teams chartered to "live into" the relational contract:

- **The relationship team** focuses on monitoring the health of the relationship.
- **The excellence team** focuses on quality control, transformational initiatives, continuous improvement, and prioritization and tracking of innovation ideas.
- **The sustainability team** focuses on workload, scheduling, recruiting, and retention.
- **The best value team** focuses on finance, billing, workload optimization, and operational efficiencies.

Each team meets at regular intervals to review progress against the shared vision, goals, outcomes, and measures.

The contract also specifies a second governance mechanism—a “two in a box” communication approach in which an administrator is teamed with a hospitalist for each of the four governance teams. The approach encourages trust and honesty between the two sides, said Ken Smith, a hospitalist at South Island. “Before, we had no one to speak with [if concerns arose]. Now I have someone I know fairly well at a high level in administration. If I need to make an urgent decision or have a difficult issue that can’t wait for the next formal meeting, I can phone my two-in-a-box partner and ask to meet.”

Such pairings are also highly encouraged outside the governance teams to strengthen the relationship and build trust between parties at all levels. For example, Kim Kerrone and Jean Maskey, informal partners, both say that formal relational contracting was “transformational” for their respective organizations. Both point to the surveys conducted immediately before the process began and one year after the relational contract was in place: The number of people who expressed a positive attitude toward the relationship increased by 84% in just two years. Administrators and hospitalists who had called their relationship “broken,” “dysfunctional,” and “distrustful” now describe it as “collaborative,” “trusting,” and “supportive.”

Kerrone points to financial benefits as well. “For the first time, the administration and our doctors are innovating together to drive efficiencies and optimize for patient care with our limited budget,” she said. “We not only came in under budget, we also increased our revenue by improving our MSP billing process. And in a publicly funded health care environment, that is exactly what we need to be focusing on.”

The governance structure also helped the parties surmount the tricky problem of scope creep. While the contract was being developed, in 2016 and 2017, Canada passed a law legalizing medical assistance in dying. At the time, there were too many unknowns about how it would be implemented to address the issue formally. So the sustainability team came up with a pilot project to address how to fairly add the additional scope of work and new role for health care providers to the hospitalists’ schedule and pricing model. Gone were the battles of “not in scope”; instead, there was a spirit of “how can we accommodate this new reality given our statement of intent?”

The Future: Contracting for Competitive Advantage

Formal relational contracts will never completely replace traditional transactional contracts. Nor should they. But the process we have outlined should be part of the contracting tool kit to govern highly complex relationships that demand collaboration and flexibility.

Glenn Gallins, the attorney representing South Island Hospitalists and a law professor at the University of Victoria, offers the following advice when it comes to embracing formal relational contracts: "The focus on negotiating the foundation of the relationship first is brilliant. But the real power is it threads all the way down to core decisions on how the parties would work." In a business world where strategic, long-term relationships are critical to competitive advantage, leaders have no choice but to overturn the status quo.

A version of this article appeared in the September–October 2019 issue of *Harvard Business Review*.

David Frydlinger is the managing partner at Cirio, a law firm in Stockholm, Sweden, and an adjunct lecturer at the University of Tennessee, Knoxville's Haslam College of Business.

Oliver Hart is the Lewis P. and Linda L. Geyser University Professor at Harvard University and a 2016 corecipient of the Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel.

Kate Vitasek is a member of the graduate and executive education faculty of the Haslam College of Business.

This article is about NEGOTIATIONS

⊕ Follow This Topic

Related Topics: Supply Chain