TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Herb Hyman/797-1016

SUBJECT: Resolution

AFFECTED DISTRICT: n/a

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH WALTER KELLER, INC. FOR COST RECOVERY CONSULTING SERVICES.

REPORT IN BRIEF: The Town Council approved Ordinance 2002-028 adopting a cost recovery program. In order to implement this program, the Town needs to contract with consultants to perform the required services. The Town solicited sealed proposals. Request for Proposal documents were sent to seventeen prospective proposers. Additionally, the bid was advertised state-wide in Florida Bid Reporting and nationally in BidNet and also posted on the Town's web site. The Town received four (4) proposals. The selection committee review the proposals and determined that all four proposers were well qualified to perform the work. The selection committee felt that it would be a benefit to contract with all four proposers to allow maximum flexibility in assigning work and handling workload. The initial contract is a two (2) year agreement with an option to extend the contract for an additional two (2) year period by mutual agreement of the parties. Contract extensions, if appropriate, will be handled administratively by staff subject to budgetary approval by Town Council.

PREVIOUS ACTIONS: Ordinance R-2002-028 adopted the cost recovery program.

CONCURRENCES: This contract was negotiated by the Procurement Manager, the Director of Development Services, and members of the Planning & Zoning department. The contract has been reviewed by the Town's Attorney.

FISCAL IMPACT:

Has request been budgeted? n/a

Additional Comments: Fees are paid by applicant.

RECOMMENDATION(S): Motion to approve the resolution.

Attachment(s):
Two (2) copies of master agreement

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH WALTER KELLER, INC. FOR COST RECOVERY CONSULTING SERVICES.

WHEREAS, the Town Council approved Ordinance 2002-028 adopting a cost recovery program; and

WHEREAS, the Town requires the services of consultants to carry out this program; and

WHEREAS, the Town solicited sealed proposals for consultant services; and

WHEREAS, after review, the Town Council authorizes the Mayor to execute a contract with Walter Keller, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council authorizes the Mayor to execute a contract with Leigh Walter Keller, Inc. for cost recovery consulting services which is attached hereto and identified as Attachment "A".

SECTION 2. The initial term is two (2) years with options to extend the contract for an additional two (2) year term by mutual agreement of the parties. Contract extensions, if appropriate, will be handled administratively by staff subject to budgetary approval by Town Council.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2002

_____

MAYOR/COUNCILMEMBER

Attest:

_____

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2002

AGREEMENT BETWEEN THE TOWN OF DAVIE AND WALTER KELLER, INC. FOR COST RECOVERY CONSULTANT SERVICES

THIS AGREEMENT, made and entered into the 6th day of November, 2002, by and between:

TOWN OF DAVIE, FLORIDA
a municipal corporation
6591 Orange Drive
Davie, Florida 33314
(hereinafter referred to as "TOWN")

and

Walter Keller, Inc.
1890 University Drive, Suite 304
Coral Springs, Florida 33071
(hereinafter referred to as "CORPORATION)

WHEREAS, the Town issued a Request for Proposal (B-02-132) for Cost Recovery Consultant Services; and

WHEREAS, the intent of the Town staff is to recommend multiple awards to the Town Council and establish a list of qualified firms; and

WHEREAS, the recommended firms will provide consulting services for projects in accordance with the scope of services outlined in the Town's RFP; and

WHEREAS, it is in the Town's best interest to negotiate contracts for such services.

NOW, THEREFORE, in consideration of the benefits provided by CORPORATION to the citizens of Davie and the covenants and conditions herein expressed and the faithful performance of all such covenants and conditions, the parties agree as follows:

Section 1.

1.01 The above recitals are true and correct and are incorporated herein.

Section 2. TERM

2.01 This Agreement shall be effective upon the approval of the Town Council and shall terminate two (2) years from that date. However, either party may terminate this Agreement by providing a thirty (30) calendar days written notice. The TOWN shall have the option to renew this Agreement for one (1) additional two (2) year term upon the same terms, conditions and limitations imposed hereby.

Section 3. SCOPE OF SERVICES

3.01 CORPORATION acknowledges that its firm is on a list of professional firms to be considered by the Town and the applicant to provide cost recovery consultant services for projects as outlined in the Town's RFP (B-02-132).

3.02 CORPORATION will conduct services as outlined in the TOWN'S RFP B-02-132. CORPORATION will be required to provide experienced professional service in all disciplines.

3.03 CORPORATION acknowledges that each applicant will be given a choice of all firms under contract with the TOWN.

3.04 CORPORATION will provide pricing to the applicant in accordance with the price schedule attached hereto and identified as Exhibit "A".

Section 4. CONSIDERATION

4.01 Should TOWN request services from CORPORATION, such services shall be provided in accordance with the price schedule, which is inclusive of all fees and expenses, including travel and other direct expenses. Said price schedule is attached hereto and incorporated herein as Exhibit "A". CORPORATION may submit a revised exhibit "A" for consideration by TOWN during the term of the Agreement; however, CORPORATION may only submit a revision once during any twelve month period.

4.02 Once the applicant and the chosen CORPORATION have agreed on the cost for the subject submittal, the applicant will pay the TOWN and the CORPORATION will begin work. The CORPORATION will summit all invoices to the TOWN. The TOWN will pay all properly submitted invoices in accordance with the Florida Prompt Payment Act.

Section 5. DUTIES AND RESPONSIBILITIES OF TOWN

5.01 Timely review and comment on all work product submitted by CORPORATION and schedule all required meetings on a timely basis.

5.02 Other assistance as may be required by CORPORATION to complete required work authorized by TOWN.

Section 6. INSURANCE

6.01 Prior to commencing work, the CORPORATION shall provide TOWN with a certificate of insurance providing coverage as required.

6.02 The CORPORATION shall secure and maintain, at its own expense, and keep in effect during the full period of the agreement a policy or policies of insurance, which must include the following coverages and minimum limits of liability:

(a) **Professional Liability Insurance** in an amount not less than $1,000,000.00 per claim.

(b) **Worker's Compensation and Employer's Liability Insurance** for all employees of the CORPORATION engaged in work under the Agreement in accordance with the laws of the State of Florida. The CORPORATION shall agree to be responsible for the employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

(c) **Comprehensive General Liability Insurance** with the following minimum limits of liability:

$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence. Coverage shall specifically include the following minimum limits not less than those required for Bodily Injury Liability and Property Damage:

$500,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence:

(1) Premises and Operations;
(2) Independent Contractors;
(3) Products and Completed Operations;
(4) Broad Form Property Damage;
(5) Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract;
(6) Personal Injury Coverage with employment and contractual exclusions removed and deleted; and
(7) Explosion, collapse, underground coverage (X - C - U)

(d) Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the CORPORATION in the performance of the work with the following minimum limits of liability:

$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence.

6.03 ALL LIABILITY INSURANCE POLICIES EXCEPT PROFESSIONAL LIABILITY SHALL SPECIFICALLY PROVIDE THAT THE TOWN OF DAVIE IS AN ADDITIONAL NAMED INSURED OR ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND THE OPERATIONS OF THE CORPORATION UNDER THE AGREEMENT. Insurance Companies selected must be acceptable to TOWN. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to TOWN by certified mail.

6.04 The required insurance coverage shall be issued by an insurance company duly authorized and licensed to do business in the State of Florida with the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide:

Financial Stability B+ to A+

6.05 The CORPORATION is required to submit a list of claims presently outstanding against their professional liability coverage. This information must be provided by and signed by the agent of the insurance carrier. If no outstanding claims exist, a statement of this fact must be provided by and signed by the agent of the insurance carrier.

Section 7. INDEMNIFICATION

7.01 GENERAL INDEMNIFICATION: The CORPORATION agrees to indemnify and hold harmless the TOWN, its officers, agents, and employees, from any and all liability, defense costs, including attorneys' fees, and all other fees incidental to the defense, loss, or damage the TOWN may suffer as a result of claims, demands, costs, or judgments against it arising from the CORPORATION'S negligence on the subject project. Nothing in this agreement shall be construed to affect in any way the TOWN'S rights, privileges, and immunities as set forth in Florida Statutes 768.28.

7.02 PATENT AND COPYRIGHT INDEMNIFICATION: The CORPORATION agrees to indemnify, save and hold harmless the TOWN, its officers, agents and employees, from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other work in connection with the performance of the Agreement.

Section 8. TERMINATION AND DEFAULT

8.01 In the event CORPORATION shall default in any of the terms, obligations, restrictions or conditions of the Proposal documents, TOWN shall give written notice by certified mail, return receipt requested to CORPORATION of default and that such default shall be corrected or actions taken to correct such default shall be commenced within ten (10) calendar days thereof. In the event CORPORATION has failed to correct the conditions of default or the default is not remedied to the satisfaction and approval of TOWN, TOWN shall have all legal remedies available to it, including, but not limited to termination of this Agreement in which case the CORPORATION shall be liable for all procurement and reprocurement costs and any and all damages permitted by law arising from the default and breach of this Agreement.

8.02 TOWN shall have the right to terminate the Agreement, without cause, by giving written notice to CORPORATION of such termination and specifying the effective date thereof, at least ten (10) calendar days prior to the effective date of termination. Should the Town terminate pursuant to this section, 8.02, CORPORATION shall be entitled to prompt payment for all work completed through the date CORPORATION receives notice. CORPORATION shall not provide any services after receipt of notice of termination from The TOWN.

Section 9. RECORDS AND AUDIT

9.01 TOWN reserves the right to audit the records of CORPORATION relating to this project at any time during the performance and term of the Agreement and for a period of three (3) years after completion and acceptance by TOWN. If required by TOWN, CORPORATION shall agree to submit to an audit by an independent certified public accountant selected by TOWN. CORPORATION shall allow TOWN to inspect, examine and review the records of CORPORATION at any and all times during normal business hours during the term of this Agreement.

Section 10. INDEPENDENT CONTRACTOR

10.01 It is understood and agreed that CORPORATION is and shall remain an independent contractor with respect to the services being performed by CORPORATION pursuant to this Agreement and shall not, for any purpose, be deemed an employee of TOWN.

Section 11. CONFLICT OF INTEREST

11.01 CORPORATION covenants that no person under its employ who presently exercises any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect, with TOWN. CORPORATION further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interests, on the part of CORPORATION or its employees, must be disclosed in writing to TOWN.

11.02 CORPORATION is aware of the conflict of interest laws of Broward County and the State of Florida, Chapter 112, Florida Statutes (1993), as amended, and agrees that it will fully comply in all respects with the terms of said laws.

11.03 CORPORATION warrants that it has not employed or retained any person employed by TOWN to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay, any public official or person employed by TOWN any fee, commission, percentage, brokerage fee or gift of any kind, contingent upon or resulting from the award of his privilege.

Section 12. ASSIGNMENT

12.01 This is a personal services Agreement whereby TOWN has expressly retained CORPORATION. This Agreement is not assignable or transferable in whole or in part without the prior expressed written consent of the TOWN which consent can be arbitrarily withheld.

Section 13. COMPLIANCE WITH LAWS

13.01 CORPORATION shall comply with all applicable statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, Town of Davie and of any other public authority which may be applicable to this Agreement.

Section 14. VENUE

14.01 Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida and the prevailing party to any resultant judgment shall be entitled to an award of all reasonable attorney's fees, paralegal expenses, interest and court costs incurred by such prevailing party against the losing party including reasonable appellant attorney's fees, interest and taxable costs.

Section 15. GOVERNING LAW

15.01 The validity, construction and effect of this agreement shall be governed by the laws of the State of Florida.

Section 16. INSOLVENCY

16.01 In the event that either party shall become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, or become subject to rehabilitation, then, at the option of the other party and immediately upon written notice, this Agreement shall terminate and be of no further force and effect.

Section 17. ENTIRE AGREEMENT

17.01 This Agreement contains the entire understanding of the parties relating to the subject matter hereof superseding all prior communications between the parties, whether oral or written, and this Agreement may not be altered, amended, modified or otherwise changed nor may any of the terms hereof be waived, except by a written instrument executed by both parties. The failure of a party to seek redress for violation of or to insist on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.

Section 18. SEVERABILITY

18.01 Should any part, term or provision of this Agreement be by the courts decided to be illegal or in Conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.

Section 19. NOTICES

19 . 01 All notices or other communications required by this Agreement shall be in writing and deemed delivered upon mailing by certified mail, return receipt requested, to the following persons and addresses unless otherwise specified herein:

TOWN:

Development Services Director
Town of Davie
6591 Orange Drive
Davie, Florida 33314

CORPORATION:

Walter Keller
Walter Keller, Inc.
1890 University Drive, Suite 304
Coral Springs, Florida 33071

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first written above, in two (2) counterparts, each of which shall without proof or accounting for the other counterpart be deemed an original Contract.

Walter H. Keller, Inc.
CORPORATION

Walter H. Keller
BY

President
Title

Witness:

Date: _____

OWNER

Town of Davie, a Florida Municipal Corporation

ATTEST:

_____
Russell Muniz
Town Clerk

(Seal)

_____
Harry Venis
Mayor

_____
Tom Willi
Town Administrator

DATE: _____

APPROVED AS TO FORM AND CORRECTNESS:

_____
Monroe Kiar
Town Attorney
Town of Davie

Council Approved: _____
Date

Exhibit "A"

CONSULTANT COST RECOVERY FEES

10/21/02

Town of Davie

CONSULTANT : Walter H. Keller, Inc.

APPLICATON TYPE	BASIS OF FIXED PRICE	FIXED PRICE CHARGE†	Re-Review Fee*
Variance			
Single Family & Duplex	Lump Sum	$1,800.00	
All others	Lump Sum	$2,250.00	
Rezoning	Lump Sum	$3,500.00	
Special Permit	Lump Sum	$1,500.00	
Administrative Special Permit	Lump Sum	$900.00	
Vacation of Right of Way	Lump Sum	$2,250.00	+$750/Re-Review
Perimeter Plat	Lump Sum	$2,500.00	+$750/Re-Review
Subdivision Plat			
Less than 10 Acres	Lump Sum	$2,500.00	+$750/Re-Review
10 Acres or more	Lump Sum	$4,000.00	+$900/Re-Review
Delegation Request	Lump Sum	$1,800.00	
Site Plan			
Non Residential			
Less than 5 Acres	Min Fee + Bldg Flr Area SF Fee	$2,500 + $30/1,000 SF > 30K SF	+$750/Re-Review
More than 5 Acres	Min Fee + Bldg Flr Area SF Fee	$4,000 + $20/1,000 SF > 80K SF	+$900/Re-Review
Residential			
Less than 5 Acres	Min Fee + Dwelling Unit Fee	$1,800 + $20/Unit >25 Units	+$750/Re-Review
More than 5 Acres	Min Fee + Dwelling Unit Fee	$2,500 + $15/Unit >75 Units	+$900/Re-Review
Master Development Site Plan	Lump Sum**	$5,000.00	+$900/Re-Review
† Includes one Re-Review			
* Additional Re-Reviews			
**Includes Site Plan Review			
Fees and rates are valid for a two year period			
	Classification	**Hourly Rate**	
	Principal	$135.00	
	Sr. Project Manager	$110.00	
	Sr. Landscape Architect	$100.00	
	Sr. Reg. Engineer/Planner	$90.00	
	Reg. Engineer/Planner	$80.00	
	Engineer/Planner	$70.00	
	Sr. Cadd/Tech/Administrative	$65.00	
	Cadd/Tech/ Adminstrative	$60.00	