

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers
FROM/PHONE: Mark Kutney/797-1101 by 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 DUNCAN ASSOCIATES FOR MISCELLANEOUS PLANNING SERVICES.

REPORT IN BRIEF: The Town solicited proposals for firms to provide continuing miscellaneous planning services. The Town Council approved the selection of Duncan Associates as one of three firms that the Town would be entering into contracts with by Resolution R-2004-49. Staff negotiated with Duncan Associates as directed by Resolution R-2004-49 and presents the attached contract for execution by the Mayor. This master contract will establish an hourly rate schedule that will be the basis of pricing for all projects. As work assignments are identified, the Development Services Director or his designee will negotiate a Memorandum of Understanding defining the scope of work to be completed and the price for this work. All Memorandums of Understanding will be executed administratively. The initial term of this contract is two (2) years with options to extend the contract for two additional one (1) year terms 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: Resolution R-2004-49.

CONCURRENCES: This contract was negotiated by the Procurement Manager, the Development Services Director, and the Planning and Zoning Manager.

FISCAL IMPACT:

Has request been budgeted? yes
 If yes, expected cost: dependent on the number of work assignments
 Account Name: Development Services-Contractual Services Account
 Additional Comments: Not applicable

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 DUNCAN ASSOCIATES. FOR MISCELLANEOUS PLANNING SERVICES.

WHEREAS, the Town Council has previously approved the selection of Duncan Associates to provide continuing planning services by Resolution R-2004-49; and

WHEREAS, staff negotiated a master contract with Duncan Associates which establishes hourly rates to be charged for all projects; and

WHEREAS, as the need for services arises, Duncan Associates will be required to enter into a Memorandum of Understanding with the Town to authorize the work for each described scope of services.

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 the master contract with Duncan Associates for miscellaneous planning services attached hereto and identified as Attachment "A".

SECTION 2. The Town Council authorizes the appropriate staff member to approve the Memorandums of Understanding for services which are derived from the pricing structure of this master contract and limited to the provisions of "continuing services" as defined by Florida State Statutes.

SECTION 3. The initial contract term is two (2) years with an option to extend the contract for two (2) additional one (1) year terms by mutual agreement of the parties. Contract extensions, if appropriate, will be handled administratively by staff subject to budgetary approval by Town Council.

SECTION 4. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2004

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2004

**AGREEMENT BETWEEN THE TOWN OF DAVIE AND DUNCAN ASSOCIATES FOR
MISCELLANEOUS PLANNING SERVICES**

THIS AGREEMENT, made and entered into the 21ST day of April, 2004, by and
between:

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

Duncan Associates
13276 Research Blvd.
Suite 208
Austin, Texas 78750
(hereafter referred to as "CORPORATION")

WHEREAS, the Town issued a Request for Proposal (B-04-25) for Miscellaneous
Planning 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 professional services for
projects that do not exceed \$1,000,000.00 in basic construction cost or \$50,000.00 for a planning or
study activity pursuant to the "continuing services" Section 287.055, Florida Statutes; and

WHEREAS, the Town Council approved staff's recommendation by
Resolution R-2004-49 and authorized the Town Administrator or his designee 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 two (2) additional one (1) year terms 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 urban planning firms to be considered by the Town to provide professional services for projects that do not exceed \$1,000,000.00 in basic construction cost or \$50,000.00 for a planning or study activity pursuant to the "continuing services" Section 287.055, Florida Statutes.

3.02 CORPORATION will conduct services as outlined in the TOWN'S RFP B-04-25. CORPORATION will be required to provide experienced professional service in all planning disciplines.

3.03 CORPORATION acknowledges that from time to time TOWN will contact CORPORATION to perform a specified scope of work. All work to be performed by CORPORATION must be authorized by the TOWN, with such authorization containing additional information, terms and conditions related to the specific project.

3.04 CORPORATION will enter into a Memorandum of Understanding with TOWN for the "Authorization of Work" for each required scope of service to be completed by CORPORATION.

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.

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 copies of all certificates 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 occurrence.

(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 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 CONTRACTOR 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 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. Nothing in the Agreement shall be construed to benefit or grant any claim or cause of action to any third party,

7.02 PATENT AND COPYRIGHT INDEMNIFICATION: The CORPORATION agrees to indemnify, defend, 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. Any and all work products produced during the term of this contract by CORPORATION shall be the sole property of the TOWN.

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 reprourement 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 thirty (30) calendar days prior to the effective date of termination.

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 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:

Procurement Manager
Town of Davie
6591 Orange Drive
Davie, Florida 33314

CORPORATION:

James B. Duncan
Duncan Associates
13276 Research Blvd.
Suite 208
Austin, Texas 78750

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"Exhibit A"

duncan | associates

Price Schedule:	
Personnel	Hourly Rate
Principal	\$175
Land Use Attorney	\$195
Senior Associate	\$135
Associate	\$95
Planner	\$60
Other Direct Expenses:	
Printing (if required by client)	Face Value of Attached Receipts
Delivery (if required by client)	Face Value of Attached Receipts

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