

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Council members

FROM/PHONE: William F. Underwood, II, Director of Finance, 797-1050
Document prepared by: William F. Underwood, II

SUBJECT: Resolution

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN OF DAVIE TO ENTER INTO AN AGREEMENT BETWEEN DUNLAP & ASSOCIATES, INC. AND THE TOWN OF DAVIE.

EFFECTED DISTRICT: Townwide

REPORT IN BRIEF: Town Council previously approved the rankings for Financial Consulting Services on February 1, 2006 and authorized staff to negotiate an agreement with the top ranked firm. Attached is the agreement with Dunlap & Associates, Inc. which conforms with their proposal as submitted to Town Council.

PREVIOUS ACTIONS: Town Council previously approved Resolution 2007-027 authorizing staff to negotiate an agreement.

CONCURRENCES: The attached agreement was forwarded to the Town's Attorney for review.

FISCAL IMPACT: Contingent on the issuance of bonds and paid from bond proceeds.

RECOMMENDATION(S): Motion to Approve Resolution

Attachment(s):
Resolution
Dunlap & Associates Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH DUNLAP & ASSOCIATES, INC. FOR FINANCIAL CONSULTING SERVICES

WHEREAS, the Town Council approved Resolution 2006-027 ranking Dunlap & Associates, Inc first; and

WHEREAS, the Town requires the services of financial consultants; and

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

WHEREAS, after review, the Town Council authorizes the Mayor to execute an agreement with Dunlap & Associates, 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 an agreement with Dunlap & Associates, Inc. for financial 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 three (3) additional one (1) year terms by mutual agreement of the parties.

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

PASSED AND ADOPTED THIS _____ DAY OF _____, 2006

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2006

ATTACHMENT "A"

AGREEMENT WITH DUNLAP & ASSOCIATES, INC.

FOR FINANCIAL CONSULTING SERVICES

THIS AGREEMENT, entered into this _____ day of _____, 2006, by and between the Town of Davie, Florida, hereinafter referred to as "Client", and Dunlap & Associates, Inc. or a successor firm, hereinafter referred to as "Financial Advisor".

WHEREAS, the Client desires assistance in providing financial consulting in relation to issuance of bonds and other indebtedness.

WHEREAS, the Financial Advisor is experienced and qualified in providing said services under the terms and conditions hereinafter set forth:

NOW, THEREFORE, the Client hereby retains the Financial Advisor to provide financial consulting services for bond issuance. In consideration of the covenants and conditions hereinafter contained, the parties hereto agree as follows:

I. SERVICES TO BE PERFORMED BY FINANCIAL ADVISOR

A. **Debt Issue Development and Sales Services**. The Financial Advisor shall perform the following services for a debt offering (bond issue) when authorized by the Client.

1. Planning and Development Phase

- a. Research and advise on aspects of tax exemption and arbitrage in cooperation with the Client's legal counsel and bond counsel. Assist in obtaining Internal Revenue Service rulings, if necessary, and private activity allocation from the State of Florida.
- b. If necessary, assist in the preparation and analysis of refunding studies in cooperation with Client's officials and administrative staff, bond attorneys, accountants, architects, engineers, feasibility consultants and other professionals as requested by the Client.
- c. Advise the Client regarding the methods available to finance the project in question with tax-exempt debt.
- d. Carefully analyze the financing to determine the best methods of strengthening its marketability consistent with current economic and capital market conditions and increasingly stringent rating agency criteria. This may involve the use of municipal bond insurance, surety bonds, letters of credit, underlying ratings, rating upgrades or other credit enhancement devices. A more thorough discussion of the Financial Advisor's credit enhancement services is presented later in this section.
- e. Perform a comprehensive analysis to determine the best possible plan of finance. This could involve fixed, variable or synthetic fixed debt. The bond

issue will be analyzed on its merits, including a market test to determine its marketability. Assist in determination of method of sale. Coordinate selection of an underwriter, if a negotiated sale is selected.

- f. Assist in obtaining municipal bond insurance on the bonds, if necessary, to obtain a AAA rating on the bonds.
- g. Consult with the rating agencies, Moody's, Standard & Poor's and/or Fitch Investors Service with regard to the proposed financing and assist in obtaining the most favorable credit rating possible. Prepare Client thoroughly for any credit rating presentations and participate in those meetings.
- h. Provide assistance and recommendations with the selection of ancillary service providers such as underwriters, registrar, trustee and printer.
- i. Act as liaison with bond counsel and coordinate other professionals providing information in connection with the proposed financing.
- j. Prepare a timetable of events for all concerned leading to the successful sale and delivery of an offering.

2. Marketing Phase

- a. Advise on the appropriate terms and conditions of the sale, including maturity schedule, underwriter discount, redemption provisions, interest rate bidding requirements and basis for award.
- b. Advise on the timing of the bond sale, taking into consideration such factors as changing economic conditions, current and projected market trends and specific requirements to the Client.
- c. Coordinate with bond counsel the preparation of authorizing ordinances and resolutions and other documents involved in the sale of bonds or other methods of financing. In the event the issue is sold by competitive sale, the Financial Advisor will also assist in publicizing the issue in advance with an Official Statement, Notice of Sale, Bid Forms and such other means necessary and advisable to develop nationwide public and institutional interest.
- d. Assist the Client in meeting full disclosure requirements and conforming to suggested guidelines when reviewing the Official Statement prepared by Disclosure Counsel or Underwriter's Counsel.
- e. Distribute the Official Statement to potential purchasers of the Client's securities. Directly contact those lead underwriters most likely to be syndicate managers. Maximize efforts to market the Client's debt issuance most effectively.
- f. Conduct informational meetings with the investment community, including investment bankers (dealers and dealer banks) and institutional investors (banks, bank holding companies, and insurance companies) in New York, Florida and elsewhere, if necessary, to establish bidding interest on this offering.

- g. If the financing is sold competitively, advertise the bond sale in nationally prominent financial publications, in addition to coordinating local publication requirements.
- h. For competitively sold bond issues, verify the bid opening to assist with the verification and evaluation of bids and recommend the most favorable bid for award.

3. Bond Closing Phase

- a. Direct bond closing details, including coordination with bond counsel, printer, underwriter and insurance companies to promptly execute the closing of the financing.
- b. Direct, coordinate and supervise preparation of the transcript and provide the Client with bond and interest debt service schedules showing required semi-annual payments and other information relevant to the completed financing.
- c. Solicit bids on investment of idle funds, if requested.

B. **General Services**

- 1. Facilitate the Client on any required bond and loan coverage tests, anti-dilution test as required by loan documents or as requested by rating agencies.
- 2. In addition, the Financial Advisor will attend periodic meetings as requested by Client for items that result in a financing.

C. **Work Products.** The Financial Advisor or Disclosure Counsel shall provide the following work products for each competitive and negotiated debt offering.

- 1. Estimated Timetable
- 2. Rating Agency Presentation Outlines
- 3. Preliminary Official Statement¹ (review and comment)
- 4. Final Official Statement (review and comment)
- 5. Official Notice of Bond Sale (Competitively Sold Issues)
- 6. Such other analyses, cash flow projections and materials necessary for financial planning and bond sale purposes.
- 7. Bond refinancing sensitivity analyses.

II. FEES FOR SERVICES PERFORMED

A. **Fees for all services:**

For the performance of services in Sections I.A., I.B. and I.C., the Financial Advisor shall be compensated on the basis of the fee schedule shown in Appendix A.

- 1. **Printing Costs.** The fee schedule in Appendix A does not include printing of Official Statements

¹ Final product will be prepared by Disclosure Counsel or Underwriter's Counsel

2. Out-of-Pocket Expenses. The fee schedule in Appendix A does cover miscellaneous issuance costs and financial advisor out-of-pocket expenses related to bond issues.

B. Payment Due

1. The Financial Advisor's fee and any reimbursement for out-of pocket issuance costs shall be due and payable 30 days after receipt by the Client of the invoice.

- C. Negotiation of Fee. Any specific arrangements regarding fees not covered by this agreement may be negotiated by the Client and Financial Advisor.

III. ASSIGNMENT OF FINANCIAL ADVISOR PERSONNEL

The Client may have an opportunity to propose changes in staff at any time during the engagement.

IV. INDEMNITY

Financial Advisor agrees to defend, indemnify, save and hold harmless the Client, its officers, agents and employees from any claim, demand, suit, loss, cost or expense for any damages which may be asserted, claimed or recovered against or from Client, its officers, agents, or employees by reason of any damage to property or personal injury, including death and which damage, injury or death arises out of or is incidental to or in any way connected with Financial Advisor's performance of services. This indemnification includes, but is not limited to, the performance of this Agreement by Financial Advisor or any act or omission of Financial Advisor, their agents, servants, contractors, patrons, guests or invitees and includes any costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or the investigation thereof.

V. NOTICES

Any notices required to be given by either party to the other shall be provided to the following address:

William F. Underwood, II
Director, Budget and Finance
Town of Davie, Florida
6591 Orange Drive
Davie, FL 33314

J. Craig Dunlap
Sylvia Seaton-Dunlap
Dunlap & Associates, Inc.
1146 Keyes Avenue
Winter Park, FL 32789

VI. TERM OF AGREEMENT

This agreement shall be for a two-year period with three one-year optional renewals and annual renewals thereafter unless terminated by either party commencing on the date of its execution. Modification shall be by mutual consent and termination shall be sixty (60) day written notice by either party. The Client shall not be obligated to pay for any services provided by Financial Advisor after Financial Advisor has received notice of termination.

During the term of this agreement, the Client may terminate this agreement for cause after first giving the Financial Advisor (30) days notice of default and opportunity to cure the default within the thirty day period. In the event the acts constituting default are a violation of law, the Financial Advisor will be subject to immediate termination of agreement.

In the event this agreement is terminated for convenience, Financial Advisor shall be paid for any services performed up until the date the Agreement is terminated. Upon being notified of Client's election to terminate, Financial Advisor shall refrain from performing further services or incurring additional expenses under the terms of this agreement.

VII. OTHER TERMS AND CONDITIONS

The Financial Advisor will provide a certificate of insurance for a minimum of \$1,000,000 professional liability coverage, and the Client shall be additional named insured.

This agreement shall be governed by the laws of the State of Florida. The Financial Advisor agrees to follow all Federal, State and local Laws including, but not limited to, Public Records Laws.

It is agreed the Financial Advisor presently has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Financial Advisor's services under this agreement. It is further agreed that in the performance of this agreement, the Financial Advisor shall employ no person having any such interest.

IN WITNESS WHEREOF, the parties have signed this contract as of the day and the year above written.

TOWN OF DAVIE, FLORIDA

DUNLAP & ASSOCIATES, INC.

By: _____
Mayor

By: _____
President

By: _____
Town Administrator

By: _____
Senior Vice President

By: _____
Town Clerk

APPENDIX A

FEE SCHEDULE

1. The Financial Advisor will receive **an hourly fee** relating to advisory services as follows:

Senior Vice President and above	\$150/hour
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2. Upon completion of a bond financing, **a bond fee** payable to the Financial Advisor would be as follows:

\$.80/\$1,000 for the first \$20 million

\$.50/\$1,000 for amounts in excess of \$20 million

A minimum fee of \$15,000 would be charged on each financing transaction.

This fee schedule would apply to all types of financing arrangements sold at either competitive or negotiated sale, based upon our proposal to provide a full range of consulting services under all financing scenarios. Billing rates are subject to a minimum of five percent increase per year or adjusted according to inflation.

Our estimated fees are based on the previously detailed scope of work. Should you determine that changes to the scope of work are necessary, our fees will be adjusted accordingly. We are prepared to commence work at your request and will complete the project in the time frame requested.

Reimbursable expenses – Out-of-pocket expenses for communications, Federal Express, computer, postage, courier, copying, mileage within Florida and travel time will be billed at an amount of \$2,500 per financing transaction; however, will not exceed \$5,000 per fiscal year.

If the financing is not completed, Dunlap & Associates, Inc. would, at your request, terminate its work and would only bill you for fees and expenses incurred to that point in time.

3. **Bidding Agent**

- For investment services, the Financial Advisor will arrange for the competitive bidding of bond proceeds and will be compensated by the successful bidder in an amount consistent with Federal tax regulations.
- The present value of 3 basis points per year on the notional amount for the average life of the swap will apply for any interest rate hedging products, including interest rate swaps in our role as Agent in these transactions. Such fees are to be paid by the Counterparty.
- For escrow restructurings and any additional services, the fees will be negotiated on a case by case basis.
- For investment management services, Dunlap & Associates, Inc. has subcontracted with the Municipal Bond Insurance Association (MBIA) and such fees will be negotiated directly with MBIA.

If additional services, other than financial advisory services, are required, these fees will be negotiated at a later date and mutually agreed upon.

Invoices outstanding after thirty days of receipt shall accrue at the interest rate of 1.5 percent per month until paid. If we need to bring action to enforce the terms of this Agreement, you will be responsible to pay our reasonable attorney's fees, costs and expenses.