

# **TOWN OF DAVIE**

## **TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Mark Kutney / Development Services Director 797-1101

**PREPARED BY:** Prepared by Bruce Dell and Marjan Mazza

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** All

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH LEIGH ROBINSON KERR & ASSOCIATES, INC. FOR COST RECOVERY CONSULTANT SERVICES.

**REPORT IN BRIEF:** The Town Council approved the selection committee's recommendation of qualified firms to perform cost recovery consultant services and authorized staff to negotiate agreements with those qualified firms by Resolution R-2006-331. The master agreement establishes hourly rates to be charged on any project that the Town asks the contractor to perform. As the need for services comes up, the Director of Development Services will make a selection from the four qualified firms under contract to perform the task and execute a Memorandum of Understanding. The Memorandum of Understanding will set forth a particular scope of services and will be priced by the contractor using the hourly rates established by this master contract and presented to the Town Council for approval. 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 submitted to the Town Council for approval.

**PREVIOUS ACTIONS:** Resolution R-2006-331 authorized staff to negotiate a contract

**CONCURRENCES:** This contract was negotiated by the Procurement Manager and the Manager of Planning and Zoning division.

**FISCAL IMPACT:** Yes

Has request been budgeted? Yes

If yes, expected cost: dependent on the number of projects authorized and budget availability.

Account Name: Contractual services, cost recovery account

If no, amount needed: \$

What account will funds be appropriated from:

Additional Comments: Not applicable

**RECOMMENDATION(S):** Motion to approve the resolution

**Attachment(s):** Two (2) copies of master agreement, Resolution

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH LEIGH ROBINSON KERR & ASSOCIATES, INC. FOR COST RECOVERY CONSULTANT SERVICES.

WHEREAS, the Town Council previously approved the selection of certain firms to provide cost recovery consultant services by Resolution R- 2006-331; and

WHEREAS, staff members negotiated a master contract with Leigh Robinson Kerr & Associates, Inc. which establishes hourly rates to be charged for all projects; and

WHEREAS, as the need arises, Leigh Robinson Kerr & Associates, Inc. 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 a contract with Leigh Robinson Kerr & Associates, Inc. for cost recovery services which is attached hereto and identified as Attachment "A".

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

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

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

Attest:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007

**AGREEMENT BETWEEN THE TOWN OF DAVIE AND LEIGH ROBINSON  
KERR & ASSOCIATES, INC. FOR COST RECOVERY CONSULTANT SERVICES**

THIS AGREEMENT, made and entered into the    day of    , 2007, by and between:

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

Leigh Robinson Kerr & Associates, Inc.  
808 East Las Olas Blvd., Suite 104  
Ft. Lauderdale, FL 33301  
(hereafter referred to as "CORPORATION")

WHEREAS, the Town issued a Request for Proposal (B-07-01) 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 consultant services for projects in accordance with the scope of services outlined in RFP B-07-01; and

WHEREAS, the Town Council approved staff's recommendation by Resolution R-2006-331 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 an 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-07-01.

3.02 CORPORATION will conduct services as outlined in the TOWN'S RFP B-07-01. 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 submit 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 certified copies of all insurance policies 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 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. 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 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 that the 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 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:

Leigh Kerr  
Leigh Robinson Kerr & Associates, Inc.  
808 East Las Olas Blvd, Suite 104  
Ft. Lauderdale, FL 33301

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.

Contractor \_\_\_\_\_  
BY [Signature] \_\_\_\_\_  
Title President \_\_\_\_\_

Witness: [Signature] \_\_\_\_\_  
[Signature] \_\_\_\_\_  
Date: 1/19/07 \_\_\_\_\_

Town of Davie, a Florida  
Municipal Corporation

OWNER  
ATTEST:

\_\_\_\_\_  
Russell Muniz  
Town Clerk  
(Seal)

\_\_\_\_\_  
Tom Truex  
Mayor

\_\_\_\_\_  
Gary Shimun  
Town Administrator  
DATE: \_\_\_\_\_

APPROVED AS TO FORM AND  
CORRECTNESS:  
\_\_\_\_\_  
Town Attorney  
Town of Davie

Council Approved: \_\_\_\_\_  
Date

**EXHIBIT A**

January 2007

Rate Sheet

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Principal.....	\$225.00
Associate.....	\$125.00
CADD/Graphics.....	\$ 75.00
Technical Review.....	\$ 75.00

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