

**TOWN OF DAVIE**  
**TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Mark A. Kutney, AICP, Development Services Director/ (954)  
797-1101

**PREPARED BY:** Ingrid Allen, Planner II

**SUBJECT:** Resolution approving a professional services agreement with Iler Planning Group for the Comprehensive Plan update based on the 2005 Evaluation and Appraisal Report (EAR)

**AFFECTED DISTRICT:** Townwide

**ITEM REQUEST:** **Schedule for Council Meeting**

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE TOWN OF DAVIE AND ILER PLANNING GROUP FOR THE COMPREHENSIVE PLAN UPDATE BASED ON THE 2005 EVALUATION AND APPRAISAL REPORT (EAR); PROVIDING FOR A SCOPE OF SERVICE TO COMPLETE SAID COMPREHENSIVE PLAN UPDATE; AND TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:** The Town of Davie adopted the 2005 Evaluation and Appraisal Report (EAR) of the Comprehensive Plan on April 19, 2006 and transmitted it to the appropriate reviewing agencies. Subsequently, on July 11, 2006, the Town's 2005 EAR was found to be sufficient pursuant to the requirements of Section 163.3191 Florida Statutes. The Town is now required pursuant to Section 163.3191(10) Florida Statutes to amend its Comprehensive Plan based on the recommendations in the 2005 EAR.

In September, 2006, the Town issued a Request for Proposal (RFP) for consultant services to prepare the Comprehensive Plan Update based on the 2005 EAR. A total of four (4) firms submitted proposals. Oral presentations by each firm were made to a selection committee (comprised of Town staff) on November 28, 2006. The selection committee chose Iler Planning Group as the firm best qualified to provide the required services. On December 20, 2006, Town Council approved (#R-2006-330) Iler Planning Group to update the Town's Comprehensive Plan and authorized the negotiation of an agreement for such services. Accordingly, the item before you is the Professional

Service Agreement between the Town and Iler Planning Group for the Comprehensive Plan Update based on the 2005 EAR.

The scope of services included in this agreement will involve analyzing the existing goals, objectives and policies of each element in the Comprehensive Plan and developing revisions based on the 2005 EAR recommendations and other feedback from staff, Town Council and the public. The scope also entails updating additional data within the Comprehensive Plan to include all plan maps, housing figures, residential capacity, level of service, etc. In addition, the scope of services specifies that four (4) public workshops will be held on the proposed amendments to the Comprehensive Plan. The consultant will provide information in a format that can be posted on the Town's website ensuring that the public is informed on the status of the amendments and has the opportunity to comment. The update to the Comprehensive Plan is estimated to be completed by March, 2008.

**PREVIOUS ACTIONS:** At the December 20, 2006 Town Council meeting, Resolution #R-2006-330 was approved selecting the firm of Iler Planning Group to update the Town's Comprehensive Plan and authorizing the Town Administrator or his designee to negotiate an agreement for such services.

**CONCURRENCES:**

**FISCAL IMPACT:** Yes

Has request been budgeted? Yes

If yes, expected cost: \$174,050

Account Name: contractual services #001-0403-515-0306

If no, amount needed: \$

What account will funds be appropriated from:

Additional Comments: Approximately \$75,000 will be spent this year with the remaining funds being required in the budget for FY 2008

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

**Attachment(s):** Resolution, Professional Services Agreement, Scope of Service

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

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE TOWN OF DAVIE AND ILER PLANNING GROUP FOR THE COMPREHENSIVE PLAN UPDATE BASED ON THE 2005 EVALUATION AND APPRAISAL REPORT (EAR); PROVIDING FOR A SCOPE OF SERVICE TO COMPLETE SAID COMPREHENSIVE PLAN UPDATE; AND TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 163.3191(1) Florida Statutes requires that each local government adopt an Evaluation and Appraisal Report (EAR) once every 7 years assessing the progress in implementing the local government's Comprehensive Plan, and

WHEREAS, the Town of Davie's 2005 Evaluation and Appraisal Report (EAR) of the Comprehensive Plan was found sufficient by the South Florida Regional Planning Council pursuant to Section 163.3191 Florida Statutes on July 11, 2006, and

WHEREAS, the Town is required by Section 163.3191(10) Florida Statutes to amend its Comprehensive Plan based on the recommendations in the EAR. Amendments to update the Comprehensive Plan based on the EAR shall be adopted within 18 months after the report is determined to be sufficient, and

WHEREAS, the Town solicited proposals for updating the Town's Comprehensive Plan based on the 2005 EAR, and

WHEREAS, the selection committee chose Iler Planning Group as the firm best qualified to provide the required services, and

WHEREAS, the Town Council approved the selection of Iler Planning Group to update the Town's Comprehensive Plan and to negotiate an agreement for such services on December 20, 2006 (#R-2006-330), and

WHEREAS, the Town and Iler Planning Group agree to the terms and conditions of the Professional Services Agreement and the Scope of Service, and

WHEREAS, upon execution of the agreement, the Town will issue a notice to precede (NTP) commencing the Comprehensive Plan Update.

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

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Mayor and Town Administrator to enter into a Professional Services Agreement, attached hereto as "Professional Services Agreement", between Iler Planning Group and the Town of Davie for the completion of a subject to the terms and conditions of said Agreement.

SECTION 2. The Town Administrator and Town Attorney are authorized to make and accept non-substantive revisions to the agreement in order for the agreement to be in final, recordable form.

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.

## **PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (the “**AGREEMENT**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the **TOWN OF DAVIE**, a municipal corporation organized under the laws of the State of Florida (the “**TOWN**”), and **ILER PLANNING GROUP**, a Florida corporation, (“**CONSULTANT**”).

WHEREAS, the TOWN issued a Request for Proposals (the “Request for Proposals”) for the preparation of a Comprehensive Plan Update based on the 2005 Evaluation and Appraisal Report (EAR) (the “Project”) for the Town of Davie, a copy of which is on file in the Office of the Procurement Manager, Purchasing Department of the TOWN; and

WHEREAS, various responses to the Request for Proposals were submitted and evaluated by a Selection Committee comprised of TOWN staff; and

WHEREAS, CONSULTANT submitted a Response to the Request for Consultant Services to prepare a Comprehensive Plan Update based on the 2005 EAR dated October 19, 2006 (the “Response”), a copy of which is on file in the Office of the Procurement Manager, Purchasing Department of the TOWN, and which is incorporated herein by reference; and

WHEREAS, the TOWN has determined that it is in the best interest of the TOWN to enter into this Agreement based upon the Response of CONSULTANT and the evaluation made by the Selection Committee comprised of TOWN staff.

WHEREAS, on December 20, 2006 the Town Council approved a Resolution (R-2006-330) selecting the firm of Iler Planning Group to update the Town’s Comprehensive Plan and authorizing the Town Administrator or his designee to negotiate an agreement for such services.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the TOWN and CONSULTANT agree as follows:

### **ARTICLE 1**

#### **Recitals**

1.1 **Recitals**. The foregoing recitations are true and correct and are hereby incorporated herein by reference.

## ARTICLE 2

### Scope of Professional Services to be Provided

- 2.1 Professional Services. CONSULTANT shall perform all of the professional services (the “Professional Services”) set forth in **Exhibit “A”** attached to this Agreement and made a part hereof in connection with the Project. CONSULTANT shall also provide all necessary, incidental and related activities and services required in connection with the Professional Services and the Project.
- 2.2 Scope of Professional Services. CONSULTANT and the TOWN acknowledge and agree that the Professional Services set forth in **Exhibit “A”** do not delineate every detail and minor work task required to be performed by CONSULTANT. If, during the course of the performance of the Professional Services, CONSULTANT determines that work should be performed to complete the Project which is, in CONSULTANT’S opinion, outside the level of effort originally anticipated, CONSULTANT shall notify the TOWN’S Contract Administrator (as defined hereinafter), in writing, in a timely manner, before proceeding with the work. If CONSULTANT proceeds with said work without notifying the TOWN’S Contract Administrator, said work shall be deemed to be within the original scope of Professional Services, whether or not specifically addressed. Notice to the TOWN’S Contract Administrator does not constitute authorization or approval by the TOWN to perform the work. Without obtaining prior approval by the Town Council, the performance of work by CONSULTANT outside the originally anticipated scope of Professional Services is at CONSULTANT’S sole risk and expense.
- 2.3 Competency. CONSULTANT represents that all persons delivering the Professional Services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the Professional Services and to provide and perform the Professional Services to the satisfaction of the TOWN for the agreed compensation.
- 2.4 Standards. CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT’S performance and all interim and final product(s) provided to or on behalf of the TOWN shall be comparable to the best local and national standards.
- 2.5 Additional Services. The TOWN or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement. Such changes must be contained in a written amendment, executed by the parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of this Agreement

including the initiation of any additional services. The TOWN shall compensate CONSULTANT for such additional services as provided in such written amendment and in accordance with the hourly rates established in Section 3.2 hereof.

### ARTICLE 3

#### Compensation

- 3.1 Compensation. The TOWN agrees to pay CONSULTANT, as compensation for the performance of the Professional Services provided in **Exhibit "A"** of this Agreement, a fixed fee of One Hundred Seventy Four Thousand and Fifty Dollars (\$174,050) for services rendered. Such fee shall be paid in installments according to the following Phasing and Fee Schedule. The Town shall retain ten percent (10%) of the total cost until Town Council approval and transmittal of the final EAR-based amendments. In the event that the EAR-based amendments are not found in compliance by DCA, those technical data and analysis issues in question shall be revised as necessary by CONSULTANT until satisfaction by DCA. However, if the proposed amendment(s) were policy issues specifically directed by Town Council, the Town shall be responsible for addressing DCA comments.

#### PHASING AND FEE SCHEDULE:

Phase 1: Tasks 1 – 4, including compliance with SB 360, data and analysis for major EAR issues, and additional DIA updates.  
\$117,553

Cost estimate:

Phase 2: Tasks 5 – 12, including public involvement, updated DIAs and revised GOPs, presenting draft report to three advisory boards, LPA, Town Council Review and Transmittal hearing, ORC Report responses, Council Adoption Hearing and Transmittal for State Compliance Review. Transmittal to FDCA is anticipated to occur prior to March 11, 2008.

Cost estimate:

\$56,497

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TOTAL

\$ 174,050

- 3.2 Hourly Rate Schedule. For the purposes of determining an hourly rate schedule for any additional services requested by the TOWN and included in an amendment to this Agreement, the hourly rates of CONSULTANT and any subconsultants assigned to the Project shall be as identified in the pending

renewal of a contract (#R-2006-81) between the TOWN and Iler Planning Group for miscellaneous planning services.

CONSULTANT'S fixed fee compensation shall include all personnel costs, overhead, indirect and direct expenditures of CONSULTANT and there shall be no additional costs or related expenses unless incurred at the specific request of the TOWN and at specific preauthorized amounts.

There will be no additional charge for the written work products described in **Exhibit "A"**.

- 3.3 Work Product Approval. The TOWN'S Contract Administrator shall review all documentation prepared by CONSULTANT in connection with CONSULTANT'S performance of the Professional Services. Upon completion of each Phase, or portion thereof, of the Project as identified in Section 3.1, the CONSULTANT shall submit to the TOWN'S Contract Administrator such documents ("Documents") as will demonstrate the completion of each Phase, or portion thereof, of the Project and compliance with the requirements for each Phase as set forth in Exhibit "A". In the event the Documents are not approved by the TOWN'S Contract Administrator or Town Council, as applicable, CONSULTANT shall modify and re-submit the documents until approval is obtained from the TOWN'S Contract Administrator or Town Council, as applicable. In connection with its approval of the Documents for each Phase, or portion thereof, of the Project, the Town Council shall approve an extension of time for CONSULTANT'S performance of services under the Contract which extension shall be the number of days between the date the Documents were determined to be in compliance with the requirements for each Phase of the Project by the TOWN'S Contract Administrator and the date the approval of the Phase is considered by the Town Council at its meeting.
- 3.4 Method of Billing. CONSULTANT shall submit monthly invoices to the TOWN specifying the nature of the Professional Services and percentage of tasks performed.
- 3.5 Method of Payment. Upon the approval by the TOWN'S Contract Administrator of the monthly invoices, the TOWN'S Contract Administrator, within thirty (30) calendar days from such approval, shall pay CONSULTANT. The TOWN shall retain ten percent (10%) of the total costs indicated in Section 3.1. The TOWN shall pay the ten percent (10%) retainage of the total costs upon receiving Town Council approval and transmittal of the final EAR-based amendments. In the event that the EAR-based amendments are not found in compliance by DCA, those technical data and analysis issues in question shall be revised as necessary by CONSULTANT until satisfaction by DCA. However, if the proposed amendment(s) were policy issues specifically directed by Town Council, the Town shall be responsible for addressing DCA comments.

- 3.6 Records. CONSULTANT shall keep full and detailed records of the invoices provided to the TOWN and of all expenses incurred in connection with the Project.

## ARTICLE 4

### Term and Termination

- 4.1 The term of this Agreement shall begin upon the issuance of a Notice to Proceed by the TOWN'S Contract Administrator. CONSULTANT shall complete the Professional Services described in **Exhibit "A"** by December 1, 2007 for Phase I, and March 11, 2008 for Phase II, unless extended by written authorization of the TOWN'S Contract Administrator or Town Council, as applicable.
- 4.2 This Agreement may be terminated for cause by the TOWN or CONSULTANT upon three (3) days advance written notice by the party that elected to terminate, or for convenience by action of the TOWN upon not less than seven (7) days written notice by the TOWN'S Contract Administrator.
- 4.3 Termination of this Agreement for cause shall include, but not be limited to, failure to suitably perform the Professional Services, failure to continuously perform the Professional Services, failure to continuously perform the Professional Services in a manner calculated to meet or accomplish the objectives of the TOWN as set forth in this Agreement.
- 4.4 In the event this Agreement is terminated for cause by the TOWN, the TOWN shall compensate CONSULTANT for all services rendered through the date of termination. Under no circumstances shall the TOWN make payment for services which have not been performed. The TOWN shall withhold the Compensation until all documents required herein are provided to the TOWN.
- 4.5 If the Agreement is terminated for cause by CONSULTANT, CONSULTANT shall complete all services through the date of termination.
- 4.6 In the event this Agreement is terminated for convenience by the TOWN, CONSULTANT shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents required herein are provided to the TOWN. Upon being notified of the TOWN'S election to terminate, CONSULTANT shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall the TOWN make payment for services which have not been performed. CONSULTANT acknowledges and agrees that ten dollars (\$10.00) of the compensation to be paid by TOWN, the adequacy of which is hereby acknowledged by CONSULTANT, is given as specific consideration to CONSULTANT for TOWN'S right to terminate this Agreement for convenience.

- 4.7 Notice of termination of this Agreement shall be provided in accordance with the “Notices” section of this Agreement.

## ARTICLE 5

### Contract Administrator, Staff, and Subconsultants

- 5.1 Contract Administrator. The TOWN and CONSULTANT shall each appoint a contract administrator for the Project (individually, the “**Contract Administrator**”). The Contract Administrator shall be the representative for each of the parties concerning the Project. In the administration of this Agreement, all parties may rely upon instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the scope of the Professional Services to be provided for the Project.
- 5.2 CONSULTANT’S Staff. CONSULTANT will make available the key staff identified in CONSULTANT’S proposal to the TOWN to provide the Professional Services for the Project, so long as said key staff are in CONSULTANT’S employment.
- 5.3 Staff. CONSULTANT shall obtain prior written approval of the TOWN to change key staff. CONSULTANT shall provide the TOWN with such information as necessary to determine the suitability of proposed new key staff. The TOWN will be reasonable in evaluating key staff qualifications when changes are requested by CONSULTANT.
- 5.4 Subconsultants. CONSULTANT shall utilize the subconsultants identified in the Response to the Request for Proposals that was a material part of the selection of CONSULTANT to provide the services for the Project. CONSULTANT shall obtain the written approval of the TOWN’S Contract Administrator prior to changing or modifying the list of subconsultants submitted by CONSULTANT. The list of subconsultant is as follows: Chappell Group, Inc. Notwithstanding the foregoing, the TOWN shall be in privity solely with CONSULTANT and CONSULTANT shall be solely responsible to the TOWN for the performance and actions of the subconsultants under this Agreement.

## ARTICLE 6

### Audit Right and Retention of Records

- 6.1 Audit Right and Retention of Records. The TOWN shall have the right to audit the books, records, and accounts of CONSULTANT and all subconsultants that are related to this Project. CONSULTANT shall keep, and shall assure that all subconsultants keep, such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

- 6.2 Preservation. CONSULTANT and all subconsultants shall preserve and make available, at reasonable times for examination and audit by TOWN, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by the TOWN to be applicable to CONSULTANT'S or any subconsultant's records, CONSULTANT and subconsultants shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONSULTANT or any subconsultant. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for the TOWN'S disallowance and recovery of any payment upon such entry.

## ARTICLE 7

### Insurance

- 7.1 Required. Prior to the commencement of the Professional Services and until completion thereof (or any duly authorized Additional Services), CONSULTANT shall, at CONSULTANT' sole cost and expense and without reimbursement by the TOWN take out, maintain and pay for the following insurance in a form or forms and with a company or companies reasonably satisfactory to the TOWN covering all of the Professional Services undertaken by CONSULTANT as follows:
- 7.1.1 Workers' Compensation Insurance to apply for all employees in compliance with the Workers' Compensation Law of the State of Florida and all applicable federal laws. Such policy must include Employers Liability insurance in the amount of \$100,000.00 for each accident, \$500,000.00 disease (policy limit), and \$100,000.00 disease (each employee).
- 7.1.2 Comprehensive General Liability Insurance with minimum limits of \$1,000,000.00 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Owned vehicles.

Hired and non-owned vehicles.

Employers' non-ownership.

- 7.1.3 Professional Liability Insurance with the limits of liability provided by such policy to be no less than \$1,000,000.00.

CONSULTANT shall notify the TOWN in writing within thirty (30) days of any claims filed or made against the Professional Liability Insurance Policy.

- 7.1.4 Other. Any and all other insurance coverages required by applicable law.

- 7.2 Policies. Such policy or policies shall be issued by companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida. All such insurance coverages shall name the TOWN as an additional insured and shall provide the policy is not cancellable and may not be materially changed until the TOWN has received at least thirty (30) days prior written notice thereof. The TOWN shall be given duplicate copies of all such insurance policies containing such coverages or appropriate certificates evidencing such coverages. The amount of insurance contained in any of the aforementioned insurance coverages shall not be a limitation of the liability on the part of CONSULTANT or any of its subconsultant. Any type of insurance or any increases of limits of liability not described herein which CONSULTANT requires for its own protection on account of statute shall be its own responsibility and its own expense.

## **ARTICLE 8**

### **Indemnification**

- 8.1 Indemnification of the TOWN. CONSULTANT agrees to indemnify and hold harmless the TOWN, its officers, agents and employees, free and harmless from any claim, liability, cause of action, expense or charge, of whatever kind or nature, including, but not limited to, personal injury, loss of life, property damage including loss of use thereof, and against all loss of life, which may arise out of or be connected with the performance of contractor's duty hereunder, and shall indemnify the TOWN against any suits, actions, claims, damages, or causes of action brought by or on behalf of any person arising out of the performance of such duties, and pay all costs and expenses in connection therewith. 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.

- 8.2 The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the TOWN Attorney, any sums due CONSULTANT under this Agreement may be retained by the TOWN until all of the TOWN'S claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by the TOWN.

## **ARTICLE 9**

### Notices

- 9.1 Notices. Whenever either party is required to give notice pursuant to this Agreement, such notice shall be in writing, sent by certified U.S. mail, return receipt requested, addressed to the party for whom it is intended as follows:

As to **TOWN:** Tom Truex, Mayor  
Town of Davie  
6591 Orange Drive  
Davie, Florida 33314

Ingrid Allen, Contract Administrator  
Town of Davie  
6591 Orange Drive  
Davie, Florida 33314

As to **CONSULTANT:** Henry B. Iler, AICP  
President/Principal  
Iler Planning Group  
Harbour Point Plaza, Suite 206  
11000 Prosperity Farms Road  
Palm Beach Gardens, FL 33410

Manager Martin Schneider, AICP, Principal Planner/Project

Iler Planning Group  
Harbour Point Plaza, Suite 206  
11000 Prosperity Farms Road  
Palm Beach Gardens, FL 33410

## **ARTICLE 10**

### Miscellaneous

- 10.1 Public Entity Crimes Act. CONSULTANT represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a

contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to TOWN, may not submit a bid on a contract with the TOWN for the construction or repair of a public building or public work, may not submit bids on leases of real property to the TOWN, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the TOWN, and may not transact any business with the TOWN, in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on a convicted vendor list. Violation of this Section shall result in termination of this Agreement and recovery of all monies paid hereto.

In addition to the foregoing, CONSULTANT further represents that there has been no discrimination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a “public entity crime” and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

- 10.2 Bona fide Employees. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, the TOWN shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- 10.3 Compliance. CONSULTANT shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.
- 10.4 Assignment. This Agreement may not be assigned or transferred by CONSULTANT, but shall inure to the successors and assigns of the TOWN. CONSULTANT shall not subcontract any portion of the work required by this Agreement except as authorized herein.
- 10.5 Availability of Funds. The parties agree that this Agreement is subject to the availability of funds.
- 10.6 Ownership and Use of Documents

Written final work products shall be delivered to and become the property of the TOWN in the format specified in **Exhibit “A”** of this Agreement. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared or provided by CONSULTANT in connection with this Agreement shall become the property of the TOWN, whether the Project for which they are made is completed or not, and shall be delivered by CONSULTANT to the TOWN within thirty (30) days of the receipt of written notice of termination. If applicable, the TOWN may withhold any payments then due to CONSULTANT until CONSULTANT complies with the provisions of this section. Transfer of ownership of documents and other information pursuant to this Section shall become effective upon payment by TOWN therefore.

- 10.7 Attorney’s Fees; Costs. If either party to this Agreement must retain an attorney to enforce the performance of this Agreement by commencing legal proceedings, then the prevailing party to such proceedings shall be entitled to recover fees and costs from the other party, including reasonable attorneys’ fees and the costs from the other party, including reasonable attorneys’ fees and the costs incurred while prosecuting or defending such proceedings to a conclusion.
- 10.8 Independent Contractor. CONSULTANT is an independent contractor under this Agreement. Services provided by CONSULTANT shall be subject to the supervision of CONSULTANT. In providing the services, CONSULTANT or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the TOWN. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 10.9 Third Party Beneficiaries. Neither CONSULTANT nor the TOWN intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.
- 10.10 Discrimination. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.
- 10.11 Governance and Venue. This Agreement shall be governed by the laws of the State of Florida and venue to enforce the terms of this Agreement shall lie in Broward County, Florida.

- 10.12 Construction. The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, the use of any gender shall be held to include every other and all genders, and captions and paragraph headings shall be disregarded. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.
- 10.13 Truth-In-Negotiation Certificate. Signature of this Agreement by CONSULTANT shall serve as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit cost supporting the compensation of this Agreement are accurate, complete, and current at the time of such execution. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the TOWN determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.
- 10.14 Severance. In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.
- 10.15 Entire Agreement. This Agreement represents the entire and integrated agreement between the TOWN and CONSULTANT and supersedes all prior negotiations, representations or agreements whether written or oral. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. This Agreement may be amended only by written instrument signed by the TOWN and CONSULTANT.

This Agreement is entered into as of the day and year first written above.

TOWN OF DAVIE

ATTEST: \_\_\_\_\_

By: \_\_\_\_\_  
Tom Truex, Mayor

ILER PLANNING GROUP

By: \_\_\_\_\_

Name: Henry B. Iler, AICP

Title: President/Principal

# **TOWN OF DAVIE EAR-BASED COMPREHENSIVE PLAN AMENDMENTS**

## **SCOPE OF WORK: 7-9-07**

### *Phase I (Tasks 1 – 4) [to be completed by December 1, 2007]*

#### **Task 1 – Project Kick-off**

Consultant team will meet with staff to discuss primary goals of the project, obtain all relevant background documents and develop internal coordination procedures. A project timeline will be prepared and reviewed with staff. This timeline should include but not be limited to the following variables: steps in process; approximate time to complete; and actual due date. In addition, the consultant shall submit monthly status reports to Town staff and meet with Department Directors, as necessary, in order to keep staff updated on the progress of the scope of work. Consultant will conduct 1-day field trip of the town with staff.

#### **Task 2 – Compliance with ‘SB 360’ EAR Requirements**

When preparing the EAR-based amendments, the consultant will prepare the data and analysis required by the new 2005 EAR statutory requirements (SB360) including any current revisions to Chapter 163 in effect as of July 1, 2007:

- 1.) Financially feasible 5-year schedule of capital improvements;
- 2.) School concurrency;
- 3.) Transportation fair share mitigation; and
- 4.) Update Water Supply Plan contained in EAR with new population projections.\*

*\*Water Supply Plan estimates assume that consultant will not be responsible for developing design, engineering or cost information.*

#### **Task 3 – Data and Analysis to Address Six (6) Major EAR Issues**

Consultant will prepare data and analysis to address the detailed elements of the 6 major issues. The following issue elements may require additional data and analysis which will be performed under this scope:

\* Conduct a survey (including mapping) of current resources. Compile information from readily-available sources including Town, County, regional, State and Federal agencies. on the acreage and quality of conservation easement wetlands, parks, trails and canals, the geographical distribution of these parcels, the relative accessibility of these areas to residents served (using distance circles), the primary uses of such parcels, connectivity issues and improvements needed to meet future demands. No original field work will be

done. Jurisdictional wetlands shown on maps will be taken from regulatory agency records. GIS maps of current resources will be prepared using current maps and exhibits supplied electronically by the Town of Davie. County and State permit records will be researched for information on existing conservation areas and jurisdictional wetlands located within the Town. *This study will not include site inspections or field verifications of wetlands.*

- \* Add a policy to the Comprehensive Plan for the Town to evaluate the feasibility of creating a master plan including a landscape master plan for all Town-owned parks, trails and open spaces and a comprehensive GPS-based tree inventory. Update the current Town Trails and Open Space Master Plan to reflect review of current resources.

- \* Add Plan policies to commit the Town to evaluate and plan for the long-term stability of parks, trails and open space.

- \* Implement a Capital Needs Assessment with specific goals and criteria and insert as new Plan objectives and/or policies.

- \* Develop Comprehensive Plan policies to provide for the analysis and selection of areas for infill and redevelopment allowing affordable and workforce housing projects. Target areas will be the RAC, SR 7 neighborhoods and special districts along Griffin Road (east).

- \* Outline a mitigation program to address airport noise impact upon the eastern Mobile Home Parks and implement via new Plan objectives and/or policies.

- \* Research the ability to create a fair-share fee or charge for tax-exempt essential public services sites and add policies to the Comprehensive Plan to address the issue.

- \* Provide objectives and policies in the Transportation Element that layout the guiding principles for the future Transportation Master Plan by creating network continuity for north-south and east-west circulation, meaning that there are no gaps in the network. The network should make available alternate routes dispersing traffic and easing congestion as well as pedestrian friendly design features. Update transportation maps.

- \* Implement policies to encourage transit and other multi-modal forms of transportation throughout the Town.

- \* Suggest objectives and/or policies that will enable the Town to adopt a Transit Concurrency Management System and also create a local road concurrency system to measure the impact of new development on the local roads and provide mitigation as necessary.

- \* Encourage growth within the RAC and recognize how it will affect other parts of Davie. Evaluate Feasibility of Urban Growth Boundary.
- \* Introduce additional “smart growth” principles into the Comprehensive Plan’s GOPs.
- \* Enhance the RAC as Davie’s focal point through vehicular, pedestrian and bicycle access/circulation and overall design theme.

#### **Task 4 – Additional Data, Inventory and Analysis**

Due to the passage of time, some information in the EAR must be updated. In addition, the Town has identified some areas they would like to see addressed. The following updates will be accomplished under this task:

- 1.) Future Land Use Element categories to be consistent with new Broward County land use categories.
- 2.) Modify FLUM to reflect parks and open spaces as either Recreation/Open Space or Conservation consistent with Broward County Land Use Plan. *[This item will be completed by Town of Davie with Consultant input.]*
- 3.) Update the Intergovernmental Coordination Element (ICE) to include interlocal agreements with University of Florida, FAU, BCC, CBWCD and FDOT, and policies regarding compatibility of uses.
- 4.) Population projections to include newly-annexed areas and RAC/TOC plans.
- 5.) Existing Land Use Map. *[This item will be completed by Town of Davie.]*
- 6.) Future Land Use Map (FLUM) to include new annexed areas and parks. *[This item will be completed by Town of Davie.]*
- 7.) Vacant land by future land use. *[This item will be completed by Town of Davie.]*
- 8.) Residential capacity
- 9.) Housing data and analysis (due to new population projections).
- 10.) LOS analysis for water, sewer and parks (due to new population projections).
- 11.) Determine feasibility of using different potable water and/or wastewater LOS standards for residential developments in urban vs. rural areas.
- 12.) Create an Urban Growth Boundary around several selected redevelopment areas in east Davie.
- 13.) Consistency with County's Greenway Plan.
- 14.) New economic development objective and policies. This will not include updated development analysis beyond what is provided in the EAR.
- 15.) All Comprehensive Plan maps *[total of 30 maps]* with current available data. *[This item will be completed by Town of Davie with input from Consultant.]*
- 16.) Transportation Element DIA with current strategic traffic model.
- 17.) Review all GOPs for elimination if out-dated, and updating to address new future Town vision.

It will be required that the consultant coordinate with the Town of Davie Road Master Plan consultant who will be creating a public rights-of-way base Master Plan for the local roadways of the Town. No other updating of data, inventory and analysis of the adopted Comprehensive Plan and/or EAR will be preformed under the scope within the fixed fee price except as indicated in Tasks 2-4. *Mapping estimates assume that the Town will supply consultant with any needed GIS data/maps in digital form, and will be responsible for creating all required maps.*

## ***Phase II (Tasks 5 – 13) [to be completed March 11, 2008]***

### **Task 5 - Public Involvement**

Consultant will conduct 4 district workshops. Staff assistance will be provided, and consultant will ensure trained and experienced community facilitators are utilized. The consultant will also provide information in a format that can be posted on the Town's website regarding the proposed Comprehensive Plan amendments, including status reports, draft documents, maps, meeting notices and opportunities to comment. The workshops will occur prior to completion of the draft DIA and GOPs. In addition, two (2) meetings with Town Department Directors and Administration will be held. If new issues are identified in the workshops, then additional services will be required.

### **Task 6 – Updated Data, Inventory and Analysis (DIA)**

Consultant will consolidate all updated data, inventory and analysis from the EAR and above tasks and prepare a draft of the Comprehensive Plan DIA document. The DIA will be reviewed by staff and revisions made.

### **Task 7 – Revised Goals Objective and Policies (GOPs)**

The consultant will review the Town's Comprehensive Plan and approved 2005 Evaluation and Appraisal Report (EAR), and develop new and/or revised goals, objectives and policies pursuant to the EAR recommendations. Policy recommendations to address the 6 major EAR issues and consensus ideas from the public involvement program will also be incorporated. The revised GOPs will be reviewed with staff and appropriate changes made.

### **Task 8 – Public Hearing Draft of EAR-Based Amendments**

Under this task, consultant will submit the Public Hearing Draft to Town staff for review and approval. Consultant will also meet with the Open Space and Agricultural Advisory Board (1 meeting), the Transportation/Airport Board (1 meeting) and the Town's Site Plan Review Committee.

### **Task 9 - Local Planning Agency Review and Recommendation**

Consultant will present the draft EAR-based amendments and the results of the 4 district workshops at an LPA workshop and at an advertised public hearing for approval and recommendation.

### **Task 10 – Town Council Review and Transmittal**

Consultant will hold one-on-one meetings with each Council member to review the amendments document and conduct a Town Council workshop. Consultant will present the draft Plan amendments to the Town Council at a scheduled transmittal hearing. Following Council approval, Town will transmit the EAR-based amendments to FDCA and other agencies for the State review process.

**Task 11 – Response to State Objections, Recommendations and Comments (ORC) Report**

Following initial State review and receipt by the Town of the ORC Report, consultant will prepare responses in coordination with Town staff. Once the responses are approved by Town staff, consultant will revise the Plan GOPs and DIA accordingly, and submit the adoption draft of the proposed EAR-based Comprehensive Plan amendments to the Town.

**Task 12 – Council Adoption Hearing and Transmittal for State Compliance Review**

The consultant will present the final EAR-based amendments to the Town Council for consideration, approval and transmittal. Following Town Council approval, Town will transmit the EAR-based amendments to FDCA and other agencies for the State compliance review process. In the event that the EAR-based amendments are not found in compliance by DCA, those technical data and analysis issues in question shall be revised as necessary by CONSULTANT until satisfaction by DCA. However, if the proposed amendment(s) were policy issues specifically directed by Town Council, the Town shall be responsible for addressing DCA comments.

**Task 13 – Additional Services [Optional]**

Consultant will be available to perform any additional services related to this project and not specified in the above scope of services. These may include:

- 1.) DIA updating and new GOPs, which may come out of the public workshops and were not specified in scope.
- 2.) Additional meetings, hearing and workshops.
- 3.) Specific studies, analysis, programs, surveys, inventories, master plans and trail system recommended in the 2005 EAR and/or through the project's public involvement program.
- 4.) Open space connectivity plan.
- 5.) Additional reproduction.
- 6.) Updating of Town's Land Development Regulations to reflect the EAR-based amendments.
- 7.) New Economic Development section of Comprehensive Plan.

**Project Administration**

The Town will provide for public notice and meeting sites of all workshops, meetings and hearings. Town will arrange for a diversity of food and drinks for the workshops. Consultant will submit 2 hard copies and 1 digital copy of all deliverables. Town will prepare all required ordinances and resolutions. Town staff will also provide name,

project description, estimated cost and construction timeframe for all capital improvement projects.

**Scope of Services Fee Estimation**

*The Scope of Services may be broken into two phases.*

*Phase 1: Tasks 1 – 4, including compliance with SB 360, data and analysis for major EAR issues, and additional DIA updates. Completion date: December 1, 2007. Cost estimate: \$117,553*

*Phase 2: Tasks 5 – 12, including public involvement, updated DIAs and revised GOPs, presenting draft report to three advisory boards, LPA, Town Council Review and Transmittal hearing, ORC Report responses, Council Adoption Hearing and Transmittal for State Compliance Review. Transmittal to FDCA is anticipated to occur prior to the EAR-based amendment due date of March 11, 2008. Cost estimate: \$56,497*

*The consultant will be available to perform any additional services (Task 13), agreed upon by both parties, in either phase. Additional services are optional, and are not included as part of the above cost estimate.*