

TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers
FROM/PHONE: Monroe D. Kiar, Town Attorney, (954)584-9770
SUBJECT: Resolution

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN OF DAVIE TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH THE TRUST FOR PUBLIC LAND.

REPORT IN BRIEF: This resolution authorizes the Town to enter into a professional services agreement with the Trust For Public Land (TPL) for the purpose of conducting a feasibility study pertinent to the acquisition of open space and recreational areas. The scope of the services to be provided by the Trust For Public Land includes “feasibility research”, public opinion research and program recommendations. As compensation for the services provided under this agreement, the Town will pay to the Trust For Public Land the aggregate sum of \$25,000.00.

PREVIOUS ACTIONS: None

CONCURRENCES: None

FISCAL IMPACT: The estimated fiscal impact of this contract is \$25,000.00.

RECOMMENDATIONS: This resolution is suitable for the Town Council’s review.

ATTACHMENT(S): Resolution, Contract

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN OF DAVIE TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH THE TRUST FOR PUBLIC LAND

WHEREAS, the Town of Davie wishes to assess the feasibility of acquiring open space and recreational facilities for the benefit of its residents; and

WHEREAS, the Trust For Public Land has substantial experience in providing feasibility research, public opinion research and ballot drafting information to local governments for the purpose of acquiring open space; and

WHEREAS, the Town of Davie wishes to obtain technical assistance from the Trust of Public Land in assessing the feasibility of acquiring open space and recreational facilities; and

WHEREAS, the Town of Davie and the Trust For Public Land desire to enter into a Professional Services Agreement to specify the terms and conditions of the services to be provided by the Trust For Public Land.

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 hereby authorizes the Mayor and the Town Administrator to enter into the Professional Services Agreement with the Trust for Public Land which is attached as "Exhibit A".

SECTION 2. That this resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2005

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2005

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is entered into by and between The Trust for Public Land, a California non-profit corporation whose address 306 North Monroe Street, Tallahassee, Florida 32301 ("TPL") and the Town of Davie, a municipal corporation in the State of Florida, with an address of 6591 Orange Drive, Davie, Florida 33314 ("the Town" or "Davie").

RECITALS

WHEREAS, Davie provides park and recreation facilities and services to the general public and to the citizens of the Town of Davie; and

WHEREAS, Davie wishes to be better informed regarding its citizens' desires for parks, recreation and open space acquisition and development, and citizens' support for public acquisition and development of parks, recreation facilities and open space; and

WHEREAS, Davie has requested that TPL provide technical assistance to the Town to study the feasibility of a parks and recreation ballot measure; and

WHEREAS, TPL, through its Conservation Finance program has substantial experience in conducting feasibility research, conducting public opinion research, drafting ballot language for consideration by voters, and working in cooperation with public entities, such as Davie, on funding for and acquisition of open space and parks and is willing to provide similar services to the Town of Davie; and

WHEREAS, Davie intends to compensate TPL for the provision of professional services and the parties intend to memorialize the terms and conditions of such agreement herein.

NOW, THEREFORE, in consideration of the matters recited above, the mutual covenants set forth herein, and other good and sufficient consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. SCOPE OF SERVICES.

In connection with this Agreement, TPL shall provide technical advice and assistance to the Town of Davie in connection with the Town's effort to develop a program to finance the protection, acquisition, and development of parks and open space lands and/or possible ballot measures for consideration by the voters of the Town of Davie. Specific services include:

a. Feasibility Research: TPL, with assistance from Town staff, will complete a feasibility study of park and open space funding options for the Town of Davie. The feasibility study will include: a summary of the current state of Davie, its land, its people, and its economy, as well as growth trends that have helped shape the development of the Town in recent years; a review of the Town of Davie's Parks and Open Space Master Plan; an analysis of possible alternatives for funding a parks and open space land acquisition program; legal requirements for placing a measure on the ballot, including election and ballot language requirements; and the election history of past finance and other ballot measures in the Town of Davie, including measures for park and open space funding. Upon completion of such research, TPL shall deliver the feasibility study to the Town.

b. Public Opinion Research: TPL will conduct public opinion research to determine Town citizens' desires and support for parks, recreation, and open space acquisition and development. TPL will be responsible for issues identification, pollster selection, questionnaires and sample design, and analysis of issues. Upon completion of such research, TPL shall deliver a summary of its findings to the Town.

c. Program Recommendations: TPL will make a recommendation to the Town whether or not, in TPL's professional opinion, the Town should proceed with a ballot measure. If the decision is made to proceed, TPL will make specific recommendations to the Town as to source of funding, amount and duration of financing, expenditure priorities, public accountability, ballot language for a ballot measure, and election timing.

2. PROFESSIONAL FEES

a. Davie agrees to pay TPL, as professional fees, \$5,000.00 upon completion and delivery of the feasibility study to the Town.

b. Davie agrees to pay TPL, as professional fees, \$15,000.00 upon completion and delivery to the Town of a summary of the findings of the public opinion research.

c. Davie agrees to pay TPL, as professional fees, \$5,000.00 upon completion and delivery of the program recommendations to the Town.

d. The parties agree that the Town shall not be liable to TPL for any expenses paid or incurred by TPL in the furtherance of its obligations under this Agreement, unless otherwise agreed to in writing by the parties.

3. STATUS AS INDEPENDENT CONTRACTOR

TPL shall operate as an independent contractor and not an agent, employee or assign of the Town. In its capacity as an independent contractor, it is understood that TPL shall not be treated as an employee or assign of the Town for purposes of unemployment or workers compensation benefits, nor for state or federal tax purposes. Furthermore, this agreement does not create a partnership relationship between the Town and TPL, and is intended solely to establish the relationship of independent contractor and client. It is agreed that the TPL shall indemnify and hold the Town harmless from any and all claims, losses, judgments, and costs of suit, including attorneys' fees resulting from the actions and/or omissions of TPL.

4. CONTACT PERSONS

The Contact Persons for the parties shall be:

a. The TPL employee responsible for administering this Agreement shall be Will Abberger, Associate Director of Conservation Finance, whose address is 306 North Monroe Street, Tallahassee, Florida 32301, and whose phone number is (850) 222-7911 (ext. 23).

b. The Town's primary liaison with TPL shall be Chris Kovanes, Town Administrator, whose address is 6591 Orange Drive, Davie, Florida, 33314 and whose telephone number is (954) 797-1030.

5. GENERAL TERMS

a. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida. Any legal actions brought by the parties to enforce any provision herein shall be initiated within the 17th Judicial Circuit, in and for Broward County where jurisdiction and venue shall lie. No provision of this agreement shall be construed as a waiver of the Town's sovereign immunity or shall vest any rights in third parties to enforce any portion of this agreement.

b. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which counterparts together shall constitute but one and the same instrument.

c. All of the terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

d. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision of this Agreement be for any reason unenforceable, the balance shall nonetheless remain in and be of full force and effect, but without giving effect to such provision.

e. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

f. This Agreement constitutes the entire agreement between TPL and the Town of Davie pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations and understandings. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the parties.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and sealed by its duly authorized signatory(ies) on the date set forth below.

Attest:

TOWN OF DAVIE
Town Council

By: _____
Russell Muniz, Town Clerk

By: _____
Tom Truex, Mayor

Date: _____

By: _____
Chris Kovanes, Town Administrator

Signed, sealed and delivered
in the presence of:

THE TRUST FOR PUBLIC LAND,
a California non-profit corporation

Witness

By: _____
Will Abberger, Associate Director

Witness

Date: _____

(CORPORATE SEAL)

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