

RESOLUTION NO. 02-67

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA APPROVING THE AGREEMENT BETWEEN ILER PLANNING GROUP AND THE TOWN OF MIAMI LAKES TO PREPARE THE TOWN'S COMPREHENSIVE PLAN; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Town of Miami Lakes (the "Town") requested qualifications from firms to provide professional planning services to prepare the Town's comprehensive plan as required by Chapter 163, Florida Statutes; and

WHEREAS, the Town Manager has recommended the selection of Iler Planning Group and the Town Council has approved the selection of Iler Planning Group based upon the firm's experience and qualifications; and

WHEREAS, the Town Council finds that approval of an agreement between the Town and Iler Planning Group is in the best interest of the Town.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:**

**Section 1.**    **Recitals.**    The above recitals are true and correct and incorporated into this resolution by this reference.

**Section 2.**    The agreement for professional services to prepare the Town's comprehensive plan between Iler Planning Group and the Town of Miami Lakes (the "Agreement"), a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, is approved.

**Section 3.** The Town Manager is authorized to execute the Agreement on behalf of the Town.

**Section 4.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 9<sup>th</sup> day of April, 2002.

Wayne Slaton  
WAYNE SLATON, MAYOR

ATTEST:

Patricia M. Guell  
TOWN CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

Alison S. Bieler  
TOWN ATTORNEY

Simon / Thomson

Council voted <u>10</u> as follows:	
Mayor Wayne Slaton	<u>✓</u>
Vice Mayor Roberto Alonso	<u>✓</u>
Councilmember Mary Collins	<u>✓</u>
Councilmember Robert Meador	<u>✓</u>
Councilmember Michael Pizzi	<u>✓</u>
Councilmember Nancy Simon	<u>✓</u>
Councilmember Peter Thomson	<u>✓</u>

# EXHIBIT "A"

## **AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT** is made this 18<sup>th</sup> day of April 2002, by and between **ILER PLANNING GROUP** (hereinafter the "Consultant"), and the **TOWN OF MIAMI LAKES, FLORIDA**, a Florida municipal corporation, (hereinafter the "Town").

**WHEREAS**, the Consultant and Town, through mutual negotiation, have agreed upon a scope of services, schedule, and fee for preparation of the Town's first Comprehensive Plan (hereinafter the "Project"); and

**WHEREAS**, the Town desires to engage the Consultant to perform the services specified in the approved Scope of Services set forth in Exhibit "A" pursuant to the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Consultant and the Town agree as follows.

1. **Scope of Services\Deliverables.**

- 1.1 The Consultant shall furnish professional comprehensive planning services to the Town as set forth in the Scope of Services attached as Exhibit "A" to this Agreement.
- 1.2 Consultant shall prepare a Comprehensive Plan that is legally compliant with the minimum requirements of Chapter 163, Florida Statutes (the "Project").
- 1.3 The Consultant shall submit documents to the Town Manager, the Town Attorney and the Town Clerk with sufficient advance time for the Town to adequately notice and agenda the Deliverable for approval by the Council and/or for public hearing.
- 1.4 Within ten (10) days from the date of execution of this Agreement, Consultant and the Town Manager shall mutually agree in writing upon the Project schedule for the Scope of Services set forth in Exhibit "A" including, but not limited to, the cost to the Town for each Deliverable and the completion date for each Deliverable (the "Schedule"). Once agreed upon, the Schedule shall be deemed to be incorporated into this Agreement as Exhibit "B."

2. **Commencement Date.**

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain and continue in effect unless earlier terminated in accordance with Paragraph 6 of this Agreement.

2.2 Consultant shall begin work upon receipt of written notice to proceed by the Town Manager (the "Commencement Date").

2.3 Consultant agrees that time is of the essence and Consultant shall complete each Deliverable and the Project within the timeframes mutually agreed to by Consultant and the Town Manager in the Schedule established pursuant to Paragraph 1.4. The timeframes set forth in the Schedule may only be modified through written mutual agreement.

3. **Compensation and Payment.**

3.1 The Consultant shall receive a total fee of ONE HUNDRED EIGHTY-SIX THOUSAND FIVE HUNDRED DOLLARS AND 00/100 (\$186,500.00) (the "Fee") for all services set forth in Exhibit "A." The Fee shall constitute full payment and includes all sub-consultant fees, labor, overhead, reproduction costs, review fees, travel, mileage, telephone expenses, other costs, and profit.

3.2 The Consultant shall invoice the Town upon the completion of each Deliverable in accordance with the Schedule.

3.3 The Town shall pay Consultant within thirty (30) calendar days of approval of the invoice by the Town Manager.

4. **Sub-consultants.**

4.1 The Consultant shall utilize the following sub-consultants for completion of the Project on an as-needed basis: Kimley-Horn and Associates, Inc.; and Edward D. Stone, Jr., and Associates. Any other independent sub-consultant used on the Project must have the prior written approval of the Town Manager.

4.2 Consultant bears ultimate responsibility for all work related to the Project regardless of whether such work or any portion thereof is prepared by one of the sub-consultants. The Consultant shall be fully responsible to the Town for all errors and omissions of any approved sub-consultants. Sub-consultants shall professional liability and Workers' Compensation insurance as required by the Town, or be covered by Consultant's insurance.

4.3 Upon the Commencement Date, the Consultant shall furnish the Town with the appropriate proofs of insurance from all sub-consultants in connection with the work performed.

5. **Conflict of Interest.**

5.1 To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, represent any private sector entities (developers, corporations, real estate investors, etc.), with regard to comprehensive planning issues in the Town.

6. **Termination.**

6.1 Either party may terminate this Agreement upon sixty (60) days written notice to the other party.

6.2 Upon receipt of the Town's written notice of termination, Consultant shall not enter into any subcontract or other third party agreements or incur any financial obligations or expenses unless such expenses are specifically approved or directed in writing by the Town Manager.

6.3 In the event of termination by the Town, the Consultant will be paid for all work accepted by the Town up to the date of termination provided that the Consultant has first complied with the provisions of Paragraph 6.4 of this Agreement.

6.4 In the event of termination or expiration of this Agreement, Consultant shall cooperate in good faith in order to effectuate a smooth and harmonious transition from Consultant to the Town, or to any other person or entity the Town may designate. Consultant will take all reasonable and necessary actions to transfer all books, records, reports, working drafts, documents, maps, and data of the Town in its possession to either the Town or its designee, in a hard copy and computer format and in an orderly fashion, within 14 calendar days from the written notice of termination or expiration of this Agreement.

7. **Insurance.**

7.1 The Consultant shall maintain at its sole cost and expense at all times during the term of this Agreement general commercial liability insurance coverage and professional liability insurance coverage with minimum policy limits for each coverage in the amount of One Million Dollars (\$1,000,000.00) per occurrence, single limit for property damage and bodily injury, including death. The Consultant shall maintain at its sole cost and expense at all times during the term of this Agreement automobile liability insurance coverage with a minimum single limit in the amount of Five Hundred Thousand Dollars (\$500,000.00) per occurrence, single limit for property damage and bodily injury, including death.

7.2 The Town shall be named as an “additional insured” under the general commercial liability and automobile liability policies. Certificates of insurance coverage evidencing the minimum required coverages set forth in Paragraph 7.1 shall be delivered to the Town simultaneously with the execution of this Agreement. Each policy shall also state that it is not subject to cancellation, modification, or reduction in coverage without thirty (30) days written notice to the Town prior to the effective date of cancellation, modification, or reduction in coverage.

8. **Nondiscrimination.**

8.1 During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination. Any violation of such provisions shall constitute a material breach of this Agreement.

9. **Attorneys Fees and Waiver of Jury Trial.**

9.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

9.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

10. **Indemnification.**

10.1 Consultant shall defend, indemnify, and hold harmless the Town, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the Town for all its expenses including reasonable attorney fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

10.2 The provisions of this section shall survive termination of this Agreement.

11. **Notices/Authorized Representatives.**

- 11.1 Any notices required or permitted by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties at the following addresses:

For the Town:

Town of Miami Lakes  
Attention: Dennis White, Town Manager  
6853 Main Street  
Miami Lakes, Florida 33014  
Telephone: (305) 558-8244  
Facsimile: (305) 558-8511

With a copy to:

Weiss Serota Helfman Pastoriza & Guedes, P.A., Town Attorneys  
Attention: Nina L. Boniske, Esq.  
2665 South Bayshore Drive  
Suite 420  
Miami, FL 33133  
Phone: (305) 854-0800  
Facsimile: (305) 854-2323

For Iler Planning Group:

Henry B. Iler, AICP, President  
11211 Prosperity Farm Road  
Suite 205B  
Palm Beach Gardens, Florida 33410  
Phone: (561) 626-7067  
Facsimile: (561) 626-5292

Either party shall have the right to change its address for notice purposes by sending written notice of such change of address to the other party in accordance with the provisions hereof.

12. **Governing Law.**

- 12.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Miami-Dade County, Florida.

13. **Entire Agreement/Modification/Amendment.**

13.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

13.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

14. **Ownership and Access to Records and Audits.**

14.1 All records, books, documents, maps, data, CAD & GIS materials, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the Town under this Agreement shall be the property of the Town.

14.2 The Consultant shall maintain any and all Records pertaining to work performed under this Agreement during the term of this Agreement and for a period of three (3) years following termination of this Agreement.

14.3 The Town Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Consultant involving transactions related to this Agreement.

14.4 The Town may cancel this Agreement for refusal by the Consultant to allow access by the Town Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

15. **Nonassignability.**

15.1 This Agreement shall not be assignable by Consultant unless such assignment is first approved by the Town Manager.

16. **Severability.**

16.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.



17. **Waiver**

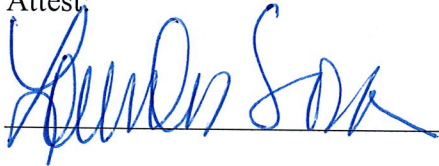
17.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

18. **Prohibition Of Contingency Fees.**

18.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

**IN WITNESS WHEREOF**, the Consultant and the Town have caused this instrument to be signed by their respective duly authorized, all on the day and year first above written.

Attest:

  
\_\_\_\_\_


ILER PLANNING GROUP

By:

  
\_\_\_\_\_

Henry B. Iler, President


Attest:

  
\_\_\_\_\_

Beatris Arguelles, Town Clerk


TOWN OF MIAMI LAKES

By:

  
\_\_\_\_\_

Dennis J. White, Town Manager

Approved as to Legal Sufficiency:

  
\_\_\_\_\_

Nina Boniske, Town Attorney

# EXHIBIT “A”

## Town of Miami Lakes Comprehensive Plan

### Scope of Services

#### **Task 1: Project Kick-off and Coordination Procedures**

Consultant will meet with Town staff, the Town Attorney, and other key officials as needed; conduct initial field surveys; and secure readily available data. Project organization and staff coordination guidelines and procedures will be established. Initial planning issues and element themes will be outlined and discussed with staff, the Town Attorney, and others, as appropriate.

*Deliverable: Memorandum outlining significant coordination and administration procedures.*

#### **Task 2: Data Collection and Mapping**

Consultant will gather updated information from the US Census Bureau, Miami-Dade County, the South Florida Regional Planning Council, the South Florida Water Management District, the Florida Department of Transportation, nearby municipalities, and various other local, regional and state agencies. The data applicable to the municipal boundaries will be separated from area wide information. GIS specialists on the team will work with the County’s GIS, Zoning and Public Works departments in obtaining adequate base maps for the Plan.

*Deliverable: Memorandum summarizing results of data collection and mapping efforts in task.*

#### **Task 3: Community Workshop**

Consultant and staff will facilitate community workshops as needed to introduce the comprehensive planning project to the community and elicit initial visioning ideas. The

Town will be responsible for providing public notice, extraordinary reproduction (> 10 copies) and meeting space for any workshops. Consultant shall provide all other items required for any workshop.

*Deliverable: Summary of workshop results.*

#### **Task 4: Future Land Use and Other Maps**

The Consultant will work with staff to establish the future and existing land use map scales, and the scale of informational maps to be used in the Plan. Land use and other Plan maps will be prepared in draft form and reviewed by staff and the Town Attorney prior to public release.

*Deliverable: Memorandum summarizing results of mapping activities in task.*

#### **Task 5: Data and Analysis for Plan Elements**

Consultant team will prepare drafts of the data and analysis components of the following Plan elements and sub-elements:

- 1.) Future Land Use;
- 2.) Housing;
- 3.) Transportation;
- 4.) Infrastructure (including sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge);
- 5.) Conservation;
- 6.) Recreation and Open Space;
- 7.) Intergovernmental Coordination;
- 8.) Public School Facilities;
- 9.) Capital Improvements; and
- 10.) Community Design.

A presentation of significant findings will be made to the Local Planning Agency (LPA) and the Town Council. In addition, the draft Data and Analysis document will be transmitted to Florida Department of Community Affairs (“DCA”) for informal review. Once all appropriate review comments are incorporated, the final draft of the Data and Analysis document will be prepared and submitted for the public hearing phase.

*Deliverable: Final draft of data and analysis component for Plan.*

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**Task 6: Community Workshop**

The Consultant will facilitate up to 2 workshops to present the key findings of the data and analysis portion of the project, elicit reaction to key policy alternatives to be addressed in the goals, objectives and policies component of the Comprehensive Plan and develop a consensus vision for the community. The Town will be responsible for providing public notice, extraordinary reproduction (> 10 copies) and meeting space for the workshops. Consultant shall provide all other items required for the workshops.

*Deliverable: Summary of workshop results.*

**Task 7: Goals, Objectives and Policies (GOPs)**

Consultant team will prepare the GOP component of the following Plan elements and sub-elements:

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- 1.) Future Land Use;
  - 2.) Housing;
  - 3.) Transportation;
  - 4.) Infrastructure (including sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge);
  - 5.) Conservation;
  - 6.) Recreation and Open Space;
  - 7.) Intergovernmental Coordination;
  - 8.) Public School Facilities;
  - 9.) Capital Improvements; and
  - 10.) Community Design.

The draft GOPs will be presented to the LPA and Town Council (up to 3 meetings). The document will also be transmitted to DCA for informal review.

*Deliverable: Final draft of GOPs component of the Plan.*

**Task 8: Public Hearing Draft**

Once all appropriate comments, including those from DCA, are incorporated, a Public Hearing Draft of the complete Miami Lakes Comprehensive Plan will be produced for staff, Town Attorney, and LPA review.

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*Deliverable: Public Hearing Draft of complete Comprehensive Plan*

**Task 9: Local Planning Agency (LPA) Hearings**

The Public Hearing Draft will be presented to the LPA (up to 2 meetings). Appropriate LPA comments will be incorporated and an approval recommendation will be sought for transmittal to the Town Council.

*Deliverable: Attendance at LPA hearings.*

**Task 10: Town Council Transmittal Hearings**

The Public Hearing Draft with LPA recommendations will be presented to the Town Council for transmittal to the Florida Department of Community Affairs and other applicable State and regional agencies (up to 2 hearings). In addition, the final “One-Page Plan” will be presented.

*Deliverables: Transmittal Draft of Approved Comprehensive Plan and the Final “One-Page Plan.”*

**Task 11: DCA ORC Report**

The Consultant will coordinate with DCA and any other reviewing agencies, including attending meetings of the reviewing agency, during the review process and shall address any outstanding concerns. Once the Objections, Recommendations and Comments (ORC) Report is received, Consultant shall prepare and submit any responses necessary to the reviewing agencies and DCA.

*Deliverable: ORC Report responses (if necessary).*

**Task 12: Final Town Council Adoption Hearing**

Consultant shall revise and prepare the final Comprehensive Plan to the Town Council (up to 2 meetings) with any changes made in response to State comments highlighted. Adoption by the Council will be sought. The adopted Plan will be transmitted to DCA for compliance review. The Town is responsible for timely transmittal of the adopted Plan to the DCA for final review.

*Deliverable: Final Adopted Comprehensive Plan.*

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**Task 13: DCA Finding of Compliance**

After satisfactory review of the adopted Plan, Consultant shall monitor final State review and issuance of the Notice of Intent to find the Miami Lakes Comprehensive Plan “in compliance.” In the event that the State determines that the Plan is “not in compliance” or the draft Plan is challenged legally by a third party, the Consultant shall work with the Town and the State to achieve compliance. The Consultant shall participate in any administrative proceedings, public hearings or other legal proceedings initiated prior to final adoption of the Plan by the State.

*Deliverable: FDCA Final Order Finding Compliance.*

**Town Responsibilities**

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During Project kick-off, the Town will provide copies to Consultant of all available plans, engineering studies and any other documents in its possession which may be useful as background information and analysis in preparing the comprehensive plan. It is assumed Town staff and consultants will expeditiously review and comment on all Project deliverables as they are submitted. In addition, the Town is responsible for all extraordinary document reproduction (>10 copies), securing of public meeting space as needed, provision of adequate public notice of meetings, workshops and hearings, and transmittal of all required Comprehensive Plan review packages to the DCA or all other review agencies.

### **Task 13: DCA Finding of Compliance**

After satisfactory review of the adopted Plan, Consultant shall monitor final State review and issuance of the Notice of Intent to find the Miami Lakes Comprehensive Plan “in compliance.” In the event that the State determines that the Plan is “not in compliance” or the draft Plan is challenged legally by a third party, the Consultant shall work with the Town and the State to achieve compliance. The Consultant shall participate in any administrative proceedings, public hearings or other legal proceedings initiated prior to final adoption of the Plan by the State.

*Deliverable: FDCA Compliance Finding. - Final Order*

### **Town Responsibilities**

During Project kick-off, the Town will provide copies to Consultant of all available plans, engineering studies and any other documents in its possession which may be useful as background information and analysis in preparing the comprehensive plan. It is assumed Town staff and consultants will expeditiously review and comment on all Project deliverables as they are submitted. In addition, the Town is responsible for all extraordinary document reproduction (>10 copies), securing of public meeting space as needed, provision of adequate public notice of meetings, workshops and hearings, and transmittal of all required Comprehensive Plan review packages to the DCA or all other review agencies.