

**GOLDEN BEACH, FLORIDA**

**RESOLUTION NO. 1576.04**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA ACCEPTING THE AGREEMENT BETWEEN THE TOWN OF GOLDEN BEACH AND MICHAEL MILLER PLANNING ASSOCIATES, INC. AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Town has a Comprehensive Plan; and,

**WHEREAS**, State law requires periodic analysis to determine the success of communities in implementing the Comprehensive Plan through an instrument known as Evaluation and Appraisal Reports; and,

**WHEREAS**, the Town of Golden Beach is required to participate in the Evaluation and Appraisal Report process; and,

**WHEREAS**, the planning firm of Michael Miller Planning Associates, Inc. provides services that would enable the Town to comply with the requirements of the State of Florida, the South Florida Regional Planning Council and Miami-Dade County; and,

**WHEREAS**, the Town does not retain employees with a planning background sufficient to satisfy the requirements from the State of Florida, the South Florida Regional Planning Council and Miami-Dade County and is in need of obtaining planning services to meet the demands of these governmental entities; and,

**WHEREAS**, the Town desires to engage a planning consulting firm to provide assistance with the Town's Comprehensive Plan and in miscellaneous planning services as may be defined and deemed necessary by the Town of Golden Beach from time-to-time.

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

**Section 1.** That the Town hereby accepts the Agreement for Professional Services between

**Resolution No. 1576.04**

the Town of Golden Beach and Michael Miller Planning Associates, Inc. and authorizing the Mayor to execute said Agreement. The Mayor may amend the Agreement subject to further negotiations. Such Agreement is subject to approval by the Town Attorney.

**Section 2.** The Town Council authorizes the execution of Work Authorization No. 1 and 2, copies of which are attached.

**Section 3. Severability.** That the provisions of this Resolution are declared to be severable and if any section, sentence, clause or phrase of this Resolution shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, clauses, sentences and phrases of this Resolution but they shall remain in effect, notwithstanding the invalidity of any part.

**Section 4. Conflict.** That all resolutions or parts of resolutions in conflict with this Resolution are hereby repealed to the extent of such conflict.

**Section 5. Effective Date.** That this Resolution shall become effective immediately upon approval of the Town Council.

**Sponsored by Administration.**

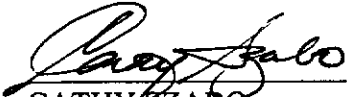
The Motion to adopt the foregoing resolution was offered by Mayor Addicott, seconded by Councilmember Singer and on roll call the following vote ensued:

Mayor Addicott	<u>AYE</u>
Vice Mayor Paruas	<u>AYE</u>
Councilmember Einstein	<u>AYE</u>
Councilmember Iglesias	<u>AYE</u>
Councilmember Singer	<u>AYE</u>

**PASSED AND ADOPTED** by the Town Council of the Town of Golden Beach this 16<sup>TH</sup> day of March, 2004.

  
MAYOR MICHAEL ADDICOTT

ATTEST:

  
CATHY SZABO  
TOWN CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

  
PAUL D. EICHNER  
TOWN ATTORNEY

Page 3

Town Attorney Sec.  
Linda - error -



## SCOPE OF SERVICES

3/25/04 original  
TM to get  
Signatures on  
page 12.

### Introduction

The 1985 Florida Growth Management Act created the legislative mandate for all local governments in the State of Florida to prepare and adopt a Comprehensive Plan that was a legally binding document. Prior to that time, Comprehensive Plans were "advisory" unless the local government decided to make the document legally binding (most did not). The Florida Statutes (FS) and Florida Administrative Code (FAC) contain the details on how to prepare and adopt a Comprehensive Plan and what information must be within the document. Up until 1998 all local governments were required to prepare their Comprehensive Plan and periodic Evaluation and Appraisal Reports (EAR) with a prescribed uniform format, content and minimum criteria. That meant that every government, regardless of size or circumstance had to contain the same subject matter and address the same issues even though the subject matter may not be pertinent to the local government. Coastal Management issues do not pertain to everyone in the state, especially if you are in Orlando! Likewise, rural or farming issues are not generally pertinent to many of the urbanized areas of southeast Florida. The effect of the Florida Legislature's 1998 amendments to Chapter 163 FS and the applicable Administrative Rules was to allow local governments to evaluate only those "issues" that pertain to and affect the local jurisdiction. This means that, as compared to the mid-1990 plan updates (Evaluation and Appraisal Reports (EARs) and EAR-Based Amendments, not every portion of a Comprehensive Plan needs to be thoroughly evaluated in the EAR, but only those major issues that affect the local government's ability to achieve its goals and objectives. However, each element as a whole must still be evaluated as to its successes or shortcomings in addition to any evaluation related to the local issues. Also data must be updated to reflect current conditions and trends.

Community planning for all local governments is important for a number of reasons. The old adage "You need a plan to know where you are going" is vital in today's world. But planning (preparing and adopting a plan) would not be very helpful with a plan that was out of date. The prescribed method to keep a Comprehensive Plan up to date is to look it over periodically and evaluate how well it is meeting the needs of the local government. Data throughout the plan becomes dated quickly (land use consumption, population growth or decline, demographic changes such as age or income levels, traffic on the roadway system, potable water and wastewater usage, etc.). Virtually every year the Florida legislature modifies the "game rules" for document content, plan amendments and/or processing changes, etc. Other governmental agencies also modify or produce new documents, policies, etc. that affect local governments. The Florida Legislature recognizes the importance of evaluating and updating plans periodically. Generally, local governments must evaluate and update their plans every seven (7) years. The Town of Golden Beach adopted their Comprehensive Plan on December 6<sup>th</sup>, 1988. Previous state law provided that for small communities (less than 2,500 persons), the mid-1990 EAR was not necessary. However, the DCA has scheduled the Town and two other small Miami-Dade communities to adopt an EAR prior to November 1<sup>st</sup>, 2004. These are the first municipal government EAR due dates in the county.

A local government Comprehensive Plan is a living document. While it is designed to provide certainty for land development activities with the local jurisdiction, in part through limitations on amendments (hard to change) and requirements for financial feasibility, it is also designed to respond to changes in the local jurisdiction. Response to changes comes in part through amendments to the plan, through revisions to implementation of the plan and in a large part to the periodic evaluation and updating of the plan.

The process for preparing an evaluation and appraisal of a Comprehensive Plan is basically the same as most other local governments programs and projects, that is, assess the adopted Comprehensive Plan, collect the information necessary to conduct the evaluation, analyze the data and prepare a report to document the findings and recommendations.

The evaluation and updating of a Comprehensive Plan is a complex task requiring skilled professionals. A large amount of information gathering is required, such as US Census data, as well as information on transportation (roads / mass transit / pedestrian / other), public utilities, housing, recreation needs, capital improvement analysis, etc. State laws and rules must be reviewed and compared to the local plan. The South Florida Regional Planning Council (SFRPC) has a recently updated Strategic Regional Policy Plan (SRPP) that must be reviewed and compared to the local plan.

The Florida Department of Community Affairs (DCA) has prepared a manual and suggested timeline for assistance in preparing an EAR. In addition, a schedule has been adopted by DCA mandating the due date for each local government to adopt the next EAR. DCA recommends that local governments begin the process approximately 15 months before the published EAR due date. Following is a general description of the various tasks or steps in the preparation and processing of an Evaluation and Appraisal Report (EAR).

#### **Task 1        Identify Issues**

As stated in the preamble above, while earlier State law provisions required a uniform format, content and minimum criteria for all local government Comprehensive Plans, since 1998 the legislation has been changed to allow a local government to focus on only those major "local issues" that affect the community. However, as stated previously, each element must still be evaluated as to its successes and shortcomings. An "issue" or "subject matter", with only a few exceptions, are chosen by the local government. Typically, an "issue" is meant to be a narrow matter of concern to the existing and future growth and development of the community. For example, "transportation" is not a proper "issue". However, congestion on a particular roadway segment, sidewalks or a specific road improvement is a valid "issue". The primary effort is to identify as clearly and specifically as possible the subject matter that is important to the local government. The state and regional planning council have input on the local "issues" as well as adjacent communities and the public. It is not intended that the local government overlook any important "issues", nor is it intended that other agencies force the local government to consider "issues" that do not affect or pertain to the jurisdiction. It is strongly encouraged that a "scoping meeting" be held with representatives from the Florida Department of Community Affairs (DCA), the regional planning council, the county, other important agencies (FDOT / SFWMD) and adjacent cities. The local government presents its draft list of "issues" for discussion. At the "scoping meeting" the "issues" are discussed and agreed to, modified or noted as problems. The final list of "issues" must be included in the EAR as well.

The Town's adopted public participation procedures used in 1988 are required to be used for the EAR. The adopted procedures called for a community survey to be done. This is unusual for any community to do because of the work effort and costs involved. MMPA will provide an option for the Town to prepare and transmit the survey to the residents or if MMPA does the survey. Also, I believe the Town has a Comprehensive Plan Committee that has been meeting recently as reported at a Town Council meeting. This group should be involved in the identification of issues to be included in the EAR.

## **Task 2           DCA Letter of Understanding**

A list of "issues" needs to be summarized and sent to DCA with a request for a letter expressing DCA's agreement with the topics selected. Receiving the Letter of Understanding from DCA is designed to avoid misunderstandings when they review the EAR for "Sufficiency".

## **Task 3           Gathering Information / Data Collection**

A Comprehensive Plan is comprised of specified individual elements (subject matters). Each element contains a great amount of detailed information on the subject matter, whether it be land use statistics, traffic counts and Level of Service (LOS) analysis, housing-related statistics such as the number of types of dwelling units, cost and general conditions, infrastructure data such as gallons of potable water and wastewater flows and amount of solid waste, and fiscal data to determine if any needed improvements can be made with available financial resources. A set of Goals, Objectives and Policies (GOPs) following statutory guidelines as to content and subject matter and based on the data set typically follow. It is the GOPs that set the "game rules" for the subject matter and are meant to guide land development approval decisions. Obviously the data sets are time sensitive, that is, the data is accurate at the time the data is placed into each Comprehensive Plan element. For example, land is continually in a state of building and re-building. Traffic volumes on roadways change at least annually. Potable water and wastewater gallon change with development activity. If the data set is inaccurate, the GOPs may reflect a local government policy decision that is not accurate. One of the primary purposes of periodically evaluating and updating a Comprehensive Plan is to ensure the information is current, accurate and resultant GOPs are based on current data. The Capital Improvement Element is required to contain a 5-Year capital improvement schedule. The schedule is meant to be updated frequently, perhaps each year or every other year. The Town's capital improvement schedule expired in FY 2000-01. Frequently, many smaller mostly built-out communities do not have the need or fiscal resources to amend their Comprehensive Plan regularly. The tendency is that the plan becomes out dated and fails to serve the local government as an accurate growth management guide.

The "scoping meeting" is important in the evaluation of the plan as the agencies can help identify agency policies, data, studies, reports, etc. to assist the local government. Although the actual updating of the various statistics, tables, maps, etc. will occur during the EAR-Based amendment process, it is helpful to identify basic new data upon which a proper evaluation can be made. For example, a new existing land use map and acreage analysis is important as well as other basic data (traffic counts / traffic accidents / potable water and wastewater flows / new housing locations, affordability, historical and / or architectural significance, etc.). Finally, in relation to the Capital Improvement Element, a complete inventory of municipal fiscal income and expenditures is necessary as well as the identification of any public facilities with deficiencies that need to be corrected including a funding source.

The maps in the adopted Comprehensive Plan appear to be older "hand-made" maps, not modern computerized maps (CADD). New maps are required to be provided to DCA, other review agencies and can be useful to the Town for common use. Once prepared the Town can sell the maps to the public. If the Town can provide our office with an AUTOCADD electronic map format some cost savings will result. We do not believe such a map exists. MMPA has the technology to quickly and inexpensively create a computerized base map that can be used for the required Comprehensive Plan maps as well as many other municipal purposes. MMPA will provide a separate fee for the preparation of computerized maps.

Once the new data set is obtained and analyzed, a draft EAR document is prepared. There is no specific size requirement for an EAR. The document needs to include as a minimum a Table of Contents, a description of the process used to ensure public participation, updated population estimates, an analysis of changes in land area, a list of modifications needed in the plan due to changes in the Florida Statutes (FS), the applicable Strategic Regional Policy Plan (SRPP) or the Florida Administrative Rules (FAC) and a statement committing the local government to update the Comprehensive Plan to address state law and administrative rule changes in the timeframes specified in the law. Additionally, a list of the agreed upon "issues" and suggested changes to the applicable data set in each element is recommended. Once draft elements are prepared, they will be submitted to the staff and other officials for review and editing. Several meetings are anticipated to discuss details and policy matters.

#### **Task 4 Local Planning Agency (LPA)**

The Florida Statutes require each local government is required to designate a Local Planning Agency (LPA). This is typically a separate Planning and Zoning Board or committee but it is also common in smaller communities to be the local governing body. It is important that the general public have plenty of opportunity to be involved in the evaluating the adopted plan since adoption and the most recent previous EAR. When the plan was originally adopted, each local government was required to adopt procedures for public participation. These same procedures should be used in the preparation and adoption of the EAR. The state has developed a list of minimum criteria that must be utilized. The LPA must review and recommend action to the local governing body. At least one (1) public hearing on the draft EAR is required.

#### **Task 5 Submit Draft EAR to DCA for Early Comments**

It is strongly recommended that the draft EAR be submitted to DCA and other review agencies for an "early review" to avoid problems. A draft EAR can be submitted to DCA and the review agencies 90 days before the actual due date. DCA will send early comments to the local government within 30 days of the receipt of the draft EAR.

#### **Task 6 Adoption of EAR by Local Government**

The elected governing body is required to hold at least one (1) public hearing to adopt the EAR. The adoption must be by Resolution or Ordinance. At the public hearing(s), the elected body considers the proposed EAR, as revised, based on comments made at the LPA meeting, public comments as well as "early" DCA comments. The local governing body can adopt the EAR within 90 days of the official due date. A typical EAR is typically several hundred pages; therefore, copying and collating the packages is monumental task. If an EAR is not adopted by the specified due date, the Florida Administrative Commission has the authority to impose sanctions against the local government. In addition, if the local government does not prepare and adopt EAR-Based Amendments within the specified timeframe, the Commission has the authority to impose sanctions as well. Sanctions may include withholding funds for improvements to roads, bridges, potable water and sanitary sewer systems, losing eligibility for CDBG funds, FRDAP Grant funds, etc.

#### **Task 7 Local Government Transmittal to DCA / Other Agency Reviews**

Once the local governing body adopts the EAR it must be transmitted to DCA, all specified review agencies and adjoining municipalities. A certain number of copies must be sent to DCA (3), each adjoining municipality (1) and each review agency (1). An electronic format and hard copies will be made available to the public.

## **Task 8      DCA Sufficiency Review**

Once DCA and the review agencies receive the draft EAR, DCA will provide preliminary comments within 60 days. This provides an opportunity to clarify and supplement information in the EAR. DCA must make a formal "Sufficiency" determination within 90 days after the EAR is received. A determination of "Sufficiency" is based on whether the EAR provides the information as prescribed in Chapter 163.3191(2), F.S. DCA prepares a "Sufficiency" approval letter or "Not Sufficiency" letter which is transmitted to the local government. If the EAR is found to be "Not Sufficient" an agreement is made to address the problem within a specified timeframe. If the local government does not adopt an EAR within the specified timeframe, they may not amend their plan until the EAR is adopted. If the EAR is adopted but found to be "Not Sufficient", the local government can amend their plan for up to a one year period.

### **EAR-Based Comprehensive Amendments**

This task is not part of the Evaluation and Appraisal Report (EAR) process. The EAR does not amend the adopted plan, it simply evaluates the adopted plan and recommends future actions. EAR-Based Amendments must be adopted within 18 months after DCA finds the EAR "Sufficient". A 6-month extension may be granted upon request for good cause.



## **WORK EFFORT / FEES TO PREPARE AND PROCESS EAR**

<u>WORK EFFORT</u>	<u>COST</u>
IDENTIFY ISSUES	\$2,500
SCOPING MEETING(S)	\$2,000
DCA LETTER OF UNDERSTANDING	\$500
GATHERING INFORMATION / PREPARE DRAFT EAR (Includes new computerized Base Map / Land Use Map)	\$13,500
LOCAL PLANNING AGENCY (LPA) MEETING(S) (Limited to 2 Meetings)	\$1,500
SUBMIT DRAFT EAR TO DCA FOR EARLY COMMENTS	\$1,000
CITY COMMISSION ADOPTION MEETING(S) (Limited to 2 Meetings)	\$1,500
TRANSMIT TO DCA AND OTHER REVIEW AGENCIES FOR SUFFICIENCY DETERMINATION	\$1,200
<b>TOTAL</b>	<b>\$23,700</b>

- Notes: (1) Meetings in addition to those specified above will be invoiced at the Hourly Rates in Exhibit "A" per the Agreement for Services.
- (2) The above fees do not include copying charges, express mail, courier services or travel out of Miami-Dade and Broward Counties. These shall be reimbursable expenses and will be invoiced in accordance with Exhibit "B" per the Agreement of Services.

### OPTIONAL ADDITIONAL SERVICES

<b>COMMUNITY SURVEY</b> (Prepare survey questions and format / coordinate with Town staff and elected officials / coordinate dissemination and collection of survey / summarize and analyze results).	<b>\$3,000</b>
<b>COMPUTERIZED AUTOCADD BASE MAP</b> (Prepare electronic base map for Town utilizing various sources including Miami-Dade maps and recorded subdivision plats. The Town will be provided with disc containing an electronic map for general municipal use.	<b>\$2,500</b>

**AGREEMENT  
FOR  
PROFESSIONAL SERVICES**

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the Town of Golden Beach, a Florida municipal corporation, hereinafter called the "TOWN" and Michael Miller Planning Associates, Inc., a Florida Corporation, 7522 Wiles Road, Suite B-206, Coral Springs, Florida 33067 hereinafter called the "CONSULTANT".

WHEREAS, the TOWN desires to engage a planning consulting firm to provide assistance in miscellaneous planning services as may be defined and deemed necessary by the Town of Golden Beach from time-to-time; and,

WHEREAS, CONSULTANT wishes to perform such services for the TOWN.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants hereinafter recited, and for other good, valuable and sufficient considerations, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

**SECTION 1 INCORPORATION OF WHEREAS CLAUSES**

The foregoing WHEREAS clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Agreement upon execution hereof.

**SECTION 2 DEFINITIONS AND IDENTIFICATIONS**

- 2a. TOWN: The Town of Golden Beach, an incorporated municipality in the State of Florida.
- 2b. CONSULTANT: Michael Miller Planning Associates, Inc., a professional organization incorporated under the Laws of the State of Florida, which is the CONSULTANT selected to perform the services pursuant to this Agreement.
- 2c. COUNCIL: The Town of Golden Beach Town Council, which is the governing body of the TOWN.
- 2d. TOWN ADMINISTRATOR: Whenever the term TOWN ADMINISTRATOR or ADMINISTRATOR is used herein it is intended to mean the TOWN ADMINISTRATOR of the Town of Golden Beach or his or her designee.

**SECTION 3 AUTHORIZATION OF WORK**

- 3a. All work to be performed by the CONSULTANT under this Agreement shall be authorized in writing by the TOWN as required through the TOWN ADMINISTRATOR in accordance with Section 8b below. The TOWN ADMINISTRATOR can give verbal authorization up to a \$1,000.00 limit for special or urgent work assignments, which shall be confirmed in writing as soon as possible thereafter.

- 3b. Authorizations in the form of Notices to Proceed, shall be in writing, contain a description of the work to be undertaken, a budget amount of the fee to be paid and a schedule. Budget amounts shall not be exceeded unless the TOWN provides prior written approval and an increase in funds available. In the event the TOWN does not approve a revised budget and additional funding, and the need for such action is not shown to be the fault of the CONSULTANT, then the authorization shall be terminated and the CONSULTANT shall be paid in full for all work performed to that point.
- 3c. The form and format of the budget described in Section 3b above shall be in sufficient detail so as to identify the various elements of cost and shall be subject to the prior written approval of the TOWN.
- 3d. Authorizations may contain additional provisions specific to the authorized work for the purpose of further clarifying or defining certain aspects of this Agreement pertinent to the work to be undertaken. Such supplemental instruction or provision shall not be construed as a modification to this Agreement.
- 3e. Authorizations shall be dated and serially numbered.
- 3f. Sub-consultants - The CONSULTANT shall obtain prior written approval of the TOWN for any sub-consultant selected by the CONSULTANT to perform any of the services pursuant to this Agreement. TOWN shall not be required to pay CONSULTANT for any sub-consultant not approved in writing by TOWN before such sub-consultant commencing work.

#### **SECTION 4 CONSULTING SERVICES**

- 4a. The CONSULTANT agrees to provide continuing consulting, review and advisory services as requested by the TOWN. It is understood that this contract is non-exclusive and that the TOWN may retain other consultants at its sole discretion. Furthermore, no minimum amount of professional services or compensation will be assured to the CONSULTANT.
- 4b. The CONSULTANT shall submit a proposal upon the ADMINISTRATOR'S or his or her authorized representative's request prior to the issuance of a Notice to Proceed. No payment shall be made for the CONSULTANT'S time or services in connection with the preparation of any such proposal.

The ADMINISTRATOR or his or her authorized representative shall confer with the CONSULTANT before any Notice to Proceed is issued to discuss and agree upon the scope, time for completion and fee for services to be rendered pursuant to this Agreement.

Upon receipt of Notice to Proceed from the ADMINISTRATOR or his or her authorized representative, the CONSULTANT agrees to perform professional services associated with the requested work in accordance with the negotiated terms of the applicable Notice to Proceed. Said services are to include, but are not limited to, the items described in Section 7.

In connection with professional services to be rendered pursuant to this Agreement, the CONSULTANT further agrees to:

- i) Maintain an adequate staff of qualified personnel on the work at all times to ensure its completion with the term specified in the applicable Notice to Proceed.
  - ii) Comply within all Federal, State and Local laws or ordinances applicable to the work.
  - iii) Cooperate fully with the TOWN in the scheduling and coordination of all phases of the work.
  - iv) Report the status of the work to the ADMINISTRATOR or his or her authorized representative upon request and hold pertinent data, calculations, field notes, records, sketches and other products open to the inspection of the ADMINISTRATOR or the ADMINISTRATOR'S authorized representative during the period of time the work is being performed.
  - v) Submit for TOWN review, draft documents, design computations, sketches and other data representative of the work's progress at the percentage stages of completion that may be stipulated in the applicable Notice to Proceed. Submit for TOWN approval the final work products upon incorporation of any modifications requested by the TOWN during any previous review.
  - vi) Confer with the TOWN at any time during the further development and implementation of improvements for which the CONSULTANT has provided design or other services as to interpretation of plans and other documents, correction of errors and omissions and preparation of any necessary plan thereof.
  - vii) Prior to final approval of the work by the ADMINISTRATOR or his or her authorized representative, complete a preliminary check of any documents through any County, Municipal, State or Federal Agency from which review, certification, permit or other approval is required.
- 4c. The services to be rendered by the CONSULTANT for each section of the work shall commence upon receipt of a written Notice to Proceed from the ADMINISTRATOR subsequent to the execution of this Agreement, and shall be completed within the time stated in the Notice to Proceed. A reasonable extension of time shall be granted in the event there is a delay on the part of the TOWN in fulfilling its part of the Agreement or should a Force Majeure render performance of the CONSULTANT'S duties impossible. Such extensions of time shall not be cause for any claim by the CONSULTANT for extra compensation.
- 4d. Force Majeure shall mean an act of God, epidemic, lighting, earthquake, fire, explosion, hurricane, flood or similar occurrence, strike, an act of a public enemy, or blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance, or similar occurrence, which has had or may reasonably be expected to have a material adverse effect on the rights and obligations under this Agreement, and which, by the

exercise of due diligence, such parties shall not have been able to avoid. Such acts or events DO NOT INCLUDE inclement weather (except as noted above) or the acts or omissions of sub-consultant / sub-contractors, third party consultants / contractors, material-men, suppliers or their subcontractors, unless such acts or omissions are otherwise encompassed by the definition set forth above.

No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations, but the obligation on the part of parties relying on such Force Majeure shall be suspended only during the continuance of any inability so caused and for no longer period of said unexpected or uncontrollable event, and such cause shall, so far as possible, be remedied with all reasonable dispatch.

It is further agreed and stipulated that the right of any party hereto to excuse its failure to perform by reason of Force Majeure shall be conditioned upon such party giving, to the other party or parties, written notice of its assertion that a Force Majeure delay has commenced within ten (10) working days after such commencement.

## **SECTION 5 SCHEDULE OF WORK**

The TOWN shall have the sole right to determine on which units or sections of the work the CONSULTANT shall proceed and in what order. Written Notices to Proceed issued by the ADMINISTRATOR or his or her authorized representative shall cover in detail the scope, time for completion and compensation for the planning services requested in connection with each unit or section of work.

## **SECTION 6 RIGHT OF DECISIONS**

All services shall be performed by the CONSULTANT to the satisfaction of the ADMINISTRATOR or his or her authorized representative who shall decide all questions, difficulties, and disputes of whatever nature which may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder, and the character, quality, amount and value thereof. The ADMINISTRATOR'S or his or her authorized representative decisions upon all claims, questions, and disputes shall be final, conclusive and binding upon the parties hereto unless such determination is clearly arbitrary or unreasonable. In the event the CONSULTANT does not concur with the decisions of the ADMINISTRATOR or their authorized representative, the CONSULTANT shall present any such objections in writing to the ADMINISTRATOR. The ADMINISTRATOR and the CONSULTANT shall abide by the decisions of the ADMINISTRATOR. This paragraph does not constitute a waiver of any party's right to proceed in a court of competent jurisdiction.

## **SECTION 7 SCOPE OF SERVICES**

This Agreement anticipates a variety of projects being requested by the TOWN, through the ADMINISTRATOR or his or her authorized representative, to be provided by the CONSULTANT as determined necessary by the TOWN.

7a. The range of services available from the CONSULTANT includes, but are not limited to services related to the following:

- Conduct special studies including, but not limited to - corridor land use studies, small area planning, neighborhood plans and annexation studies.
- Perform various land development reviews including, but not limited to – plats / subdivisions, planned developments, site plans, conditional uses, re-zonings, variances, building permit plans, occupational licenses, etc.
- Participate as a member of the Development Review Committee.
- Attend Planning and Zoning Board, other advisory boards and TOWN Council meetings as necessary.
- Prepare, process and review proposed modifications to the Land Development Regulations from time to time.
- Provide periodic drafting services for the preparation and updating of databases, land use, zoning and related maps.
- Assist in defining and prioritizing capital improvement projects.
- Develop and complete grant applications as required by the TOWN.
- Research and prepare documents related to the TOWN'S Comprehensive Plan including an Evaluation and Appraisal Report (EAR), EAR-Based amendments or other requested amendments.
- Prepare traffic and review traffic studies presented to the TOWN as a part of development permits or street modifications.
- Provide urban design plans and services.
- Participate as a team member on special projects.
- Conduct feasibility investigations and cost studies as may be required for the development of public works projects.
- As required, review land development plans and perform necessary inspections to ensure compliance with approved plans and TOWN Codes.
- Represent the TOWN, when required, before all courts or commissions to state opinions or conclusions where expert testimony is required.

- Represent the TOWN, when requested, at various intergovernmental coordination meetings or functions such as the Miami-Dade County Planners Technical Committee (MDPTC), other County, regional, state or federal agencies.
  - Function as the TOWN Planner and/or Zoning Official in the absence of TOWN staff or as otherwise assigned by the TOWN.
  - Provide any other planning - related services as requested by the ADMINISTRATOR or authorized representative.
- 7b. General Consultation: The CONSULTANT shall be available upon reasonable notice by the TOWN ADMINISTRATOR or his or her authorized representative to participate in meetings, prepare brief reports and otherwise advise and counsel the TOWN as may be requested.
- 7c. Additional Services: Services other than those contained in Section 7a above may be determined by the parties to be desirable at a future date. Such Additional Services shall be defined as to Scope of Services, Time Schedule, Deliverable Products and Compensation by means of an approved Work Authorization under this Agreement authorized and concurred in by the parties.

## **SECTION 8 COVENANTS BY THE TOWN**

The TOWN hereby covenants and agrees:

- 8a. To promptly pay the approved fees to the CONSULTANT in the amounts and at the times specified herein and in Notices to Proceed, pursuant to Section 11 herein.
- 8b. To appoint representatives with respect to work to be performed under this Agreement. These representatives shall have authority to transmit instructions, receive information, interpret and define the TOWN'S policy and decisions pertinent to the work covered by this Agreement. Initially, CONSULTANT may rely on instructions and directions from the ADMINISTRATOR until specifically advised otherwise in writing.
- 8c. The TOWN agrees that its TOWN ADMINISTRATOR and/or designated staff shall make available to the CONSULTANT any plans and other data available in the TOWN files pertaining to the work to be performed under this Agreement.

## **SECTION 9 PUBLIC RECORDS / OWNERSHIP OF DOCUMENTS**

9a. CONSULTANT shall protect, preserve and maintain all records pertaining to this Agreement pursuant to the provisions of Chapter 119, F.S. as amended from time to time. The TOWN shall become the owner of the Deliverable Products upon satisfaction of any and all indebtedness to the CONSULTANT of all studies, sketches, tracings, drawings, data, computations, details, design calculations and other documents and plans that are required for or result from the CONSULTANT'S services under this Agreement. Copies of Instruments of

Services, not otherwise restricted by limitations including but not limited to leases, copyrights, trade secrets, proprietary restrictions and prior agreements, may be obtained by the TOWN upon request and compensation in accordance with the terms and conditions of this Agreement and consistent with Chapter 119, F.S. In the event the TOWN shall use such documents, data, sketches or tracings for a purpose other than that for which they were originally provided to the TOWN, the TOWN shall remove the name plate or any other identifying features, thereby indemnifying the CONSULTANT against all claims arising from such unintended use and provide notice to the CONSULTANT of such use.

## **SECTION 10 CONFLICT OF INTEREST**

CONSULTANT agrees not to accept employment during the time this Agreement is in effect from any builder, land developer, utility company or others doing construction work within the corporate limits of the Town of Golden Beach which might be construed as a conflict of interest with CONSULTANT'S work for TOWN. The ADMINISTRATOR shall make the determination, in his or her sole discretion, of what is deemed a conflict. The TOWN recognizes that CONSULTANT provides municipal planning services to a wide range of private and public clients. Should any conflict arise related to intergovernmental coordination, the Town of Golden Beach and CONSULTANT shall agree on the issue in writing or suspend services until the issue is resolved.

## **SECTION 11 PAYMENT FOR SERVICES**

- 11a. The CONSULTANT shall submit to the TOWN monthly invoice(s) detailing all fees and expenses. Upon approval by the TOWN, the TOWN agrees to compensate the CONSULTANT for all services authorized and performed in accordance with approved Work Authorizations subject to the hourly or lump sum fee set out in each Work Authorization. TOWN shall make its best effort to pay CONSULTANT within 30 days of receipt of complete invoices.
- 11b. The TOWN agrees to pay and the CONSULTANT agrees to accept, for services rendered pursuant to this Agreement, fees and other compensation computed in accordance with one or a combination of the methods outlined below. Unique work products, however, may require a different billing method. The billing method selected shall be at the option of the TOWN.

### Lump Sum Fee

The fee for any requested portion of work may, at the option of the TOWN, be a lump sum mutually agreed upon by the TOWN and the CONSULTANT and stated in the written Notice to Proceed. Lump sum fees may or may not include reimbursable expenses.

### Fixed Hourly Rate Fees

The fee for planning services rendered by the CONSULTANT'S personnel shall be computed based on the hourly rates for said personnel indicated for each personnel category indicated in Exhibit "A". This fee shall constitute full compensation to the



CONSULTANT for costs incurred in the performance of the work such as overhead fringe benefits, operating margin and all other costs not covered by reimbursable expenses.

Overtime work considered necessary and authorized by the ADMINISTRATOR shall be compensated at time and-a-half of the rate established by Exhibit "A" attached hereof.

#### Reimbursable Expenses

The CONSULTANT shall be compensated for certain work-related expenditures not covered by fees for planning services, provided such expenditures are previously authorized in writing by the ADMINISTRATOR or his or her authorized representative. Reimbursable expenses may include expenses for document reproduction, rental of specialized equipment, and purchase of special instruments necessary for the efficient performance of the work, provided that such instruments remain the property of the TOWN upon work completion. These expenses shall be reimbursed on a direct cost basis. Expenses for travel, transportation and subsistence outside of Broward and Miami-Dade County will be reimbursed at cost per Exhibit "B". For projects that are billed as multiples of direct salary cost and fixed hourly rates, budget amounts for reimbursable expenses shall be included in the Notice to Proceed for such projects. The reimbursable expense budget shall not be exceeded without written authorization by the ADMINISTRATOR.

- 11c. The TOWN agrees to make monthly payments to the CONSULTANT for all authorized work performed during the previous calendar month or other mutually agreed invoicing period. The CONSULTANT agrees to provide copies of any records necessary to substantiate payment requests to the TOWN. Payments shall be made in accordance with the following methods:

#### Monthly Professional Fees and/or Reimbursable Expenses

The CONSULTANT shall submit duly certified invoices to the ADMINISTRATOR. Each invoice shall be referenced to the particular Notice to Proceed and written authorization that authorized the services performed and/or expenses incurred.

The amount of invoices submitted shall be comprised of the amounts due for all services performed and/or reimbursable expenses incurred to date in connection with authorized work, less previous payments. The amounts due for professional services and/or reimbursable expenses shall be calculated in accordance with the above provisions. Invoiced reimbursable expenses must be substantiated by copies of receipts and other documentation as necessary. Any disputed amounts will be subtracted from the invoice. The disputed amount will be paid upon resolution of such items.

#### Lump Sum Fee

The CONSULTANT shall submit invoices to the ADMINISTRATOR. Each invoice shall be referenced to the particular Notice to Proceed that authorized the services performed.

The amount due of invoices submitted shall be calculated by applying the percentage of the total work completed to date to the authorized lump sum, and subtracting any previous payment. Any disputed amount will be subtracted from the invoice. Disputed amount will be paid upon resolution of such items.

## **SECTION 12 WARRANTIES AND ATTORNEY'S FEES**

The CONSULTANT warrants that its services are to be performed within the limits prescribed by the TOWN with the usual thoroughness and competence of the Planning Profession and in accordance with this Agreement. No other warranty or representation; either expressed or implied, is included or intended under the terms of this Agreement.

In the event it becomes necessary for either party herein to seek legal means to enforce the terms of the Agreement, the prevailing party shall be entitled to its reasonable attorney fees and court costs, and paralegal fees at both the trial and appellate levels.

## **SECTION 13 INDEMNIFICATION**

The CONSULTANT shall, at all times hereafter, indemnify and hold harmless the TOWN, its agents, officers and employees from and against any claim, demand or cause of action of any kind or nature (including reasonable attorney fees) arising out of negligent act, error or omission of CONSULTANT, its agents, servants or employees in the performance of services under this Agreement. The TOWN shall, at all times hereafter, to the extent not inconsistent with law, indemnify and hold harmless the CONSULTANT, its agents, officers and employees from and against any claim, demand or cause of action of any kind or nature (including reasonable attorney fees) arising out of negligent act, error or omission of TOWN, its agents, servants or employees in the performance of services under this Agreement. 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

## **SECTION 14 INSURANCE**

The CONSULTANT shall provide and maintain in force at all times during the Agreement with the TOWN, such insurance, including Workers' Compensation and Employer's Liability Insurance, Comprehensive General Liability Insurance, Automobile Liability Insurance and Professional Liability Insurance as will assure to the TOWN the protection contained in the foregoing indemnification undertaken by the CONSULTANT.

- 14a. Workers' Compensation Statutory limits with \$100,000 Employers Liability.
- 14b. Commercial General Liability Insurance with limits of no less than \$1,000,000.00. Bodily injury shall include operations and premises liability, products and completed operations, owners and contractors protective liability and personal injury liability.
- 14c. Business Auto Liability coverage is to include bodily injury and property damage arising out of operation, maintenance or use of any auto, including owned, non-owned and hired

automobiles and employee non-ownership with limits of not less than \$300,000.00 per occurrence.

- 14d. Professional Liability Insurance limits of liability provided by such policy shall be no less than \$1,000,000.00 to assure the TOWN the indemnification specified in Section 13.
- 14e. A Certificate of Insurance acceptable to the TOWN shall be provided listing the above coverages and providing 30 days prior written notice to the Town of Golden Beach in the case of cancellation. The TOWN shall be named as an additional insured on both of the General Liability Policies with a waiver of subrogation on the Workers' Compensation/Employees Liability Policy.

#### **SECTION 15 TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Agreement by the CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete and current at the time of contracting. 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 non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of each authorized service.

#### **SECTION 16 NOTICES**

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified or registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified or by facsimile transfer with confirmation thereof. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective place for giving of notice, to-wit:

For TOWN:                      Town of Golden Beach  
   Attention: Bonilyn Wilbanks-Free, Town Manager  
   1 Golden Beach Drive  
   Golden Beach, Florida 33160  
   Telephone: (305) 932-0744  
   Facsimile: (305) 933-3825

For CONSULTANT:              Michael Miller Planning Associates, Inc.  
   Attention: Mr. Michael J. Miller, AICP, President  
   7522 Wiles Road  
   Suite B-206  
   Coral Springs, Florida 33067  
   Telephone: (954) 757-9909  
   Facsimile: (954) 757-7089

## **SECTION 17 MISCELLANEOUS**

- 17a. Law Governing: This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida.
- 17b. Venue for litigation concerning this Agreement shall be in Miami-Dade County, Florida.
- 17c. Severability: If any portions of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed and enforced as if such provisions had not been included.
- 17d. Entire Agreement: This Agreement, including all exhibits and work authorizations which are referred to herein, is the entire understanding of the parties hereto with respect to this Agreement and subsequent work authorizations. Said Agreement may not be modified, amended or terminated by either party except by written instrument executed by both parties or their lawful representatives, successors or assigns. No oral representations made by the CONSULTANT or its employees or agents shall be binding on the CONSULTANT unless such representations are reduced to writing.

## **SECTION 18 ENGAGEMENT OF EMPLOYEES OR SUB-CONSULTANTS**

The TOWN covenants and agrees that it shall not directly hire, employ, or otherwise engage any agent, employee or sub-consultant of the CONSULTANT which may have provided services directly to the TOWN while this agreement is in force and continuing for a period of twenty-four (24) months following the expiration or earlier termination of this agreement, unless CONSULTANT consents in writing, such consent shall not be unreasonably withheld.

## **SECTION 19 TERMINATION**

19a. It is expressly understood and agreed that the TOWN or CONSULTANT may terminate this Agreement, in total or in part, without cause or penalty, by thirty (30) days prior written notification, sent by certified mail, or by declining to issue Authorization of Work, as provided in Section 3; in which event the TOWN'S sole obligation to the CONSULTANT shall be payment, in accordance with Section 11 - Payment for Services, for those units or sections of work previously authorized and performed. Such payment shall be determined on the basis of the hours or percentage of work performed by the CONSULTANT up to the time of termination. In the event partial payment has been made for professional services not performed, the CONSULTANT shall return such forms to the TOWN within ten (10) days after receipt of written notice that said sums are due. Upon such termination, the TOWN may, without penalty or other obligation to the CONSULTANT, elect to employ other persons to perform the same similar services.

## **SECTION 20 DEFAULT**

In the event the CONSULTANT fails to comply with the provisions of this Agreement, the ADMINISTRATOR may declare the CONSULTANT in default and notify it in writing, giving a reasonable time to cure the default, but in no event shall this time period exceed sixty (60) calendar days unless otherwise agreed to by the parties. In such event, the CONSULTANT shall only be compensated for any professional services completed as of the date written notice of

default is served. In the event partial payment has been made for incomplete professional services, the CONSULTANT shall return such items to the TOWN within ten (10) days after receipt of written notice that said sums are due. The CONSULTANT shall not be compensated for professional services that have been performed but not completed by the time the ADMINISTRATOR or their authorized representative declares a default.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals the day and year first above written.

**MICHAEL MILLER PLANNING  
ASSOCIATES, INC.**

**TOWN OF GOLDEN BEACH,  
FLORIDA**

BY: \_\_\_\_\_  
Michael J. Miller, AICP, President


BY: \_\_\_\_\_  
(Authorized Agent)

BY: \_\_\_\_\_  
Janet B. Miller, Secretary  
(Seal)

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Town Attorney

**EXHIBIT "A"**

**2004 HOURLY RATE SCHEDULE FOR PERSONNEL**

Principal Planner (MJM).....	\$100.00
Senior Planner.....	\$80.00
Planner.....	\$65.00
CADD Designer.....	\$60.00
Clerical.....	\$35.00

NOTE: These rates are subject to change annually with approval of the ADMINISTRATOR.  
The above rates reflect a "local government" discount from MMPA normal hourly rates.

## EXHIBIT "B"

### REIMBURSABLE EXPENSES

- A. Transportation and Mileage  
(No expense charges for local travel – Miami-Dade and Broward County)
- |  |             |
|--|-------------|
| 1. Travel expenses (airfare/lodging/meals) | Cost        |
| 2. Auto Mileage                            | \$0.35/mile |
- B. Reproductions
- |                     |            |
|---------------------|------------|
| 1. In House         | \$.15 copy |
| 2. Outside Services | Cost +10%  |
- C. Facsimiles  
(No charge to Manager or Commission members)
- |  |             |
|--|-------------|
|  | \$1.00 page |
|--|-------------|
- D. Postage
- |  |      |
|--|------|
|  | Cost |
|--|------|
- E. Delivery and Courier Services
- |  |      |
|--|------|
|  | Cost |
|--|------|
- F. Services of Outside Consultants
- |  |      |
|--|------|
|  | Cost |
|--|------|

NOTE: These rates are subject to change annually with approval of the ADMINISTRATOR.

## TOWN OF GOLDEN BEACH, FLORIDA WORK AUTHORIZATION FOR PLANNING SERVICES

Pursuant to the Agreement for Planning Services between the Town of Golden Beach, Florida (Town) and Michael Miller Planning Associates, Inc. (MMPA) dated February \_\_\_\_, 2004, the Town hereby authorizes MMPA to perform the services described herein subject to the terms specified by this work authorization.

Work Authorization No. 2

Date Authorized 3/25/04

[Signature]  
Town Authorization (Name/Title) As Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

BY: [Signature]  
PAUL D. EICHNER,  
TOWN ATTORNEY

### SCOPE OF SERVICES

Provide miscellaneous professional planning services to the Town of Golden Beach as may be directed by the Town Manager and/or Town Council including but not limited to attendance at Town meetings as requested, general municipal planning related work, coordination with the Department of Community Affairs (DCA), South Florida Regional Planning Council (SFRPC), Miami-Dade County or other governmental agencies as requested by the Town; planning studies and staff recommendations for code amendments, review of land development applications as requested (Building Permits / Variances / etc.).

SERVICES TO BE HOURLY PER EXHIBIT "A" OF THE AGREEMENT  
HOURLY NOT TO EXCEED \$10,000.00

\$5,000.00 cc  
W.A.

MMPA Acceptance of Work Authorization

Date 3/25/04



---

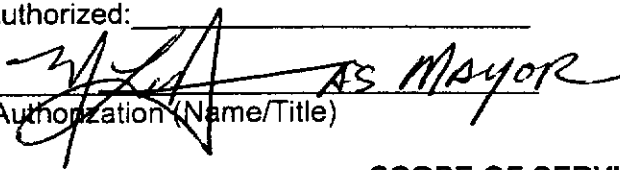
## TOWN OF GOLDEN BEACH, FLORIDA WORK AUTHORIZATION FOR PLANNING SERVICES

Pursuant to the Agreement for Planning Services between the **Town of Golden Beach, Florida (Town)** and **Michael Miller Planning Associates, Inc. (Consultant)** dated February \_\_\_\_\_, 2004, the Town hereby authorizes MMPA to perform the services described herein subject to the terms specified by this work authorization.

Work Authorization No.   1  

Date Authorized: \_\_\_\_\_

Town Authorization (Name/Title)

  
AS MAYOR

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

BY: 

PAUL D. EICHNER,  
TOWN ATTORNEY

### SCOPE OF SERVICES

Provide professional planning services to the Town of Golden Beach related to the preparation and processing of an Evaluation and Appraisal Report (EAR) of the Town's adopted 1988 Comprehensive Plan as required by Florida law. The EAR is required to be adopted by the Town prior to November 1<sup>st</sup>, 2004. See attached Scope of Services for detailed work efforts and fees.

**LUMP SUM OF \$23,700.00**  
**ADDITIONAL SERVICES – PER SCOPE OF SERVICES**  
**HOURLY PER EXHIBIT "A" OF THE AGREEMENT**  
**REIMBURSABLE EXPENSES PER EXHIBIT "B"**

\_\_\_\_\_  
MMPA Acceptance of Work Authorization

\_\_\_\_\_  
Date

3/25/04