

RESOLUTION NO. 89-10-19

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT WITH DOVER, KOHL & PARTNERS FOR PLANNING SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Town of Lake Park (Town) is a municipality with those powers enumerated by Chapter 166 Florida Statutes and the Florida Constitution; and

WHEREAS, the Town is empowered to enter into contractual arrangements with public agencies, private corporations, or other persons; and

WHEREAS, the Town Commission has determined that there is a need for the creation of amendments to the Town's Land Developments Regulations (LDRs) and its Comprehensive Plan to insure consistency with the LDRS enacted by the Village of North Palm Beach pertaining to the area of the area known as the Town City Mall Site; and

WHEREAS, the Town Commission has determined that the use of the same planning consultants to prepare amendments to the Town's LDRs would be the most cost effective way to achieve consistency with the Village's LDRs for the Town City Mall Site ; and

WHEREAS, Dover, Kohl & Partners (DKP) has submitted a proposal to the Town and the Community Development Director has recommended that the Commission accept the proposal; and

WHEREAS, the Town Commission finds that DKP's proposal is acceptable and the Commission has agreed to enter into an agreement with DKP; and

WHEREAS, the Town has budgeted funds in its current fiscal year budget which are available for the funding of this Agreement;

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are incorporated herein by reference.

Section 2. The Mayor is hereby authorized and directed to execute the Agreement with Dover, Kohl & Partners, a copy of which is attached hereto and incorporated herein as Exhibit 'A'.


Section 3. This Resolution shall take effect upon execution.

The foregoing Resolution was offered by Commissioner Flaherty, who moved its adoption. The motion was seconded by Commissioner Michewel, and upon being put to a roll call vote, the vote was as follows:

	AYE/	NAY
MAYOR MICHAEL O'ROURKE	<u>✓</u>	___
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>✓</u>	___
COMMISSIONER ERIN FLAHERTY	<u>✓</u>	___
COMMISSIONER JOHN LINDEN	<u>✓</u>	___
COMMISSIONER ROGER MICHAUD	<u>✓</u>	___

The Town Commission thereupon declared the foregoing Resolution No. 89-10-19 duly passed and adopted this 30th day of October, 2019.


TOWN OF LAKE PARK, FLORIDA

BY: 
MICHAEL O'ROURKE
MAYOR

ATTEST:


VIVIAN MENDEZ
TOWN CLERK

Approved as to form and legal sufficiency:

BY: 
THOMAS J. BAIRD
TOWN ATTORNEY



Certification

I, Sharyn Edwards Dep. Clerk of the Town of Lake Park Florida, do hereby certify that the foregoing is a true and correct copy of the original instrument as contained in the official records of the Town. Witness my hand and the Official Seal of the Town of Lake Park This 13th day of November, 2019

Town Seal _____

Town Clerk

EXHIBIT 'A'

Agreement for Professional Planning Services for the Twin City Mall Site

On this 30th day of October, 2019, the Town of Lake Park, a Florida municipality ("Town"), located at 535 Park Avenue, Lake Park, Florida 33403, and Image Network, Inc. d/b/a Dover, Kohl & Partners ("Consultant" or "DKP"), located at 1571 Sunset Drive, Coral Gables, Florida 33143, have executed this Agreement for Professional Planning Services (the "Agreement") for the creation of amendments to the Town's Land Development Regulations (LDRs) and amendments to the Town's Comprehensive Plan to insure consistency with the LDRs and comprehensive plan prepared for the Village of North Palm Beach pertaining to the Twin City Mall/Northlake Promenade Shoppes Site;

WHEREAS, the Town's Community Development Department Director has determined that a planning firm is needed to prepare amendments to the Town's Comprehensive Plan and LDRs pertaining to the Twin City Mall/Northlake Promenade Shoppes Site;

NOW, THEREFORE, in consideration of the mutual covenants set forth in the Agreement and the payment of fair and valuable consideration as provided herein, the Town and Consultant understand and mutually agree to the following terms:

ARTICLE 1 Scope of Services

Consultant agrees to provide the base services as specifically described, and set forth in EXHIBIT I (the "Scope of Services"), a copy of which is attached hereto and incorporated herein.

ARTICLE 2 Term

The term of this Agreement shall be twelve (8) months, commencing on the effective date hereof. The Town shall have the option to extend the term once for six (6) months.

ARTICLE 3 Compensation

The compensation payable by the Town to the Consultant shall be as described in EXHIBIT II (the "Compensation"), a copy of which is attached hereto and incorporated herein.

ARTICLE 4 Ownership and Use of Documents

Notwithstanding the completion, suspension, termination, or expiration of this Agreement, the following provisions in this section shall apply with respect to ownership of documents:

- A. **Final Work Products.** Both the Town and the Consultant shall have a right to retain, use, and reproduce final work products. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

Public Records. The Town is public agency subject to Chapter 119, Florida Statutes. Compliance with the Florida Public Records Law is required:

- Keep and maintain public records that ordinarily and necessarily would be required by the Town in order to perform the service;
- Provide the public with access to such public records on the same terms and conditions that the Town would provide the records and at a cost that does not exceed that provided in chapter 119, Fla. Stat., or as otherwise provided by law;
- Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
- Meet all requirements for retaining public records and transfer to the Town, at no cost, all public records in possession of the Consultant upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically shall be provided to the Town in a format that is compatible with the information technology systems of the Town.
- IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561)881-3311; 535 Park Avenue, Lake Park, Florida 33403, VMendez@lakeparkflorida.gov.

B.

ARTICLE 5 Suspension or Termination

- A. **Suspension.** If the Town fails to make timely payment to Consultant of fees or expenses, Consultant may suspend performance of services under this Agreement, provided the Consultant gives the Town seven (7) days advance written notice. Consultant shall have no liability to the Town for any delay or damage caused by a suspension of services due to untimely payment by Town. The Town shall incur all fees and costs associated with any delay or suspension of services not the fault of Consultant, including but not limited to any costs associated with changing travel dates.
- B. **Termination.** The Town may terminate this Agreement upon seven (7) days advance written notice to Consultant. If this Agreement is terminated, the Town shall reasonably compensate Consultant for those services performed and expenses reasonably incurred up to the date of termination. The Consultant may terminate this Agreement upon seven (7) days advance written notice to the Town.

ARTICLE 6 Miscellaneous Provisions

- A. **Amendments.** The duties, responsibilities, and limitations on authority of Consultant shall not be restricted, extended, or modified without a prior written agreement signed by the Town and Consultant.

- B. Assignments.** The Town and Consultant each bind themselves, and their partners, legal, successors, and assigns, to the other party to this Agreement and to its partners, legal representatives, successors, and assigns. Neither the Town nor Consultant may, without the prior written consent of the other party, assign or transfer to third parties any rights or obligations arising under this Agreement.
- c. Prohibition Against Contingency Fees.** The Consultant warrants that it has not employed any person, firm corporation or other entity other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement and that they have not paid or agreed to pay any person, firm, corporation, or other entity, other than a bona fide employee working solely for the Consultant any favor, commission, percentage, gift, or any other compensation contingent upon or resulting from the award or making of this Agreement or any other agreement with the Town. In the event of breach of this provision, the Town shall have the right to terminate this or any other agreement with the Consultant without liability, and, in its discretion, to deduct from amounts due under this Agreement, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
- D. Integration.** This Agreement constitutes the entire and integrated agreement between the Town and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. If one or more provisions contained in this Agreement should be deemed invalid, void, or unenforceable, the remaining provisions shall remain valid, binding, and enforceable to the fullest extent of the law.
- E. Default and Remedies for Default.** Violations of any of the provisions of this Agreement, including a failure to pay any sum of money when due, shall constitute an act of default. Upon any act of default, the non-defaulting party may terminate this Agreement in accordance with the provisions of Article V B, above, and the non-defaulting party may exercise any and all legal and equitable remedies.
- F. Force Majeure.** If either party is unable to perform its obligations under the Agreement due to a natural disaster or any circumstances beyond reasonable control, such obligations shall be suspended as long as those circumstances persist, provided that the delaying party promptly notifies the other party of the delay and the causes. Except where the delay is caused by an act or omission of the delaying party, any costs arising from such delay shall be borne by the party incurring the delay.
- G. Notice.** Where this Agreement provides that written notice be delivered, such notice shall be delivered using the most expeditious means available, while taking into consideration such factors as delivery time, reliability, verifiability, and expense. The Town and Consultant have designated the following business addresses as appropriate for receiving such notice:

As to the Town: Town of Lake Park, FL

Attn: Nadia DiTommaso

535 Park Avenue

Lake Park, FL 33403


As to Consultant: Dover, Kohl & Partners
ATTN: Jason King, Principal
1571 Sunset Drive
Coral Gables, Florida 33143

- H. **Waiver.** The failure of either Town or Consultant to insist upon the performance of particular terms or conditions arising under this Agreement shall not be construed as a waiver of any subsequent breach of such terms or conditions.
- I. **Attorney's Fees; Costs.** If either party to this Agreement must retain an attorney to enforce the performance of this Agreement by commencing legal proceedings, then the prevailing party in such proceedings shall be entitled to recover its attorney fees and costs from the other party.
- J. **Applicable Law/Venue.** This Agreement shall be construed in accordance with the laws of the state of Florida and the United States of America. Venue for any legal proceedings shall be in Palm Beach County, Florida.
- K. **Independent Contractor.** It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co- partners between the parties or as constituting Consultant (including its officers, employees, and agents) an agent, representative, or employee of the Town for any purpose, or in any manner, whatsoever. Consultant is to be and shall remain forever an independent contractor with respect to all services performed under this Agreement. Persons employed by Consultant in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service, or other employee rights or privileges granted to Town's officers and employees either by operation of law or by the Town. Consultant shall procure and maintain appropriate insurance coverage to cover itself and its employees, including general liability, professional liability, automobile liability and workman's compensation insurance.

WE THE UNDERSIGNED indicate our mutual understanding and consent to the aforementioned terms and conditions of this Agreement to be effective on the day and year first written above.

"The Town"

The Town of Lake Park

By: 
Michael O'Rourke/ Mayor

"Consultant"

Image Network, Inc. d/b/a Dover, Kohl, & Partners

By:  10.28.19
Jason King, Principal/ Vice President

Exhibit I - Scope of Services

PHASE 1: DRAFTING OF LDR AND COMPREHENSIVE PLAN AMENDMENTS

The new Land Development Regulations (LDRs) shall utilize the same basic format and contents of the proposed revisions to the C-3 zoning district for the North Palm Beach portion of the Twin Cities Mall site. However, in order for the LDRs for the Lake Park portion of the site to reflect the Town's policies and priorities, some adjustments are anticipated to the proposed C-3 revisions; and corresponding adjustments are anticipated to the following portions of the Town's existing regulations (not exhaustive):

- Chapter 31 - Parking in Rights-of-way, Public Parking Areas and Spaces (on-street parking)
- Chapter 55 - Community Development (planning & zoning board)
- Chapter 56 - Consistency and Concurrency Determinations
- Chapter 67 - Land Development Code (road design standards)
- Chapter 78 - Zoning
 - Article III (C-3 zoning district)
 - Article IV Walls, Fences and Hedges
 - Article V Supplementary Regulations (parking & loading; road improvements on private property)
 - Article VI Rezoning and Special Exceptions (uses & waivers)
 - Article VII Nonconforming Lots, Uses, Structures
 - Article VIII Landscaping and Vegetation Protection
 - Article XII Architectural Design Guidelines for Nonresidential Buildings

Lake Park's Comprehensive Plan designates the Twin City Mall site in the same "Commercial" Future

Land Use (FLU) designation which is applied along Northlake Boulevard, Alternate A1A, and Old Dixie Highway. This designation could be tailored for the Twin City Mall site by either creating special rules within that designation; or by creating an entirely new FLU designation; or by utilizing the Town's Mixed-Use Base District and creating a corresponding Overlay; either will require amendments to the Town's Comprehensive Plan.

PHASE 2: PUBLIC PROCESS AND PROPOSED SCHEDULE

The anticipated public process for the project is as follows (all dates are preliminary and coordination with the Village of North Palm Beach is included):

- December 2019:** One Visioning Workshop for public participation on the proposed LDR and Comprehensive Plan amendments for the Twin City Mall site. **The Consultant shall prepare and deliver a presentation and lead the discussion, with assistance from staff. (CONSULTANT TRIP 1)** Consultant shall utilize visual color renderings that serve to adequately depict, identify and encourage discussion. Consultant shall provide three paper copies and one

electronic copy of all required materials at least 14 days in advance of the workshop date.

****additional public workshop may be needed, at an additional cost****

December 2019 and January 2020:

Drafting of LDR and Comprehensive Plan amendments. **The Consultant shall lead this task, with assistance from staff.**

February 2020:

Finalize LDR and Comprehensive Plan amendments. **The Consultant shall lead this task, with assistance from staff.**

February to May 2020: Approval/Adoption Process for the C-3 amendments to LDRs and

Comprehensive Plan, including:

One Planning & Zoning Board/Local Planning Agency Public Hearing (February or March 2020): To include formal review of the Comprehensive Plan Amendments and Land Development Regulations. **The Staff shall prepare and deliver a presentation and lead the discussion. The Consultant may be requested to attend this public hearing to respond to questions (see additional services below).** Consultant shall provide eight paper copies and one electronic copy of the draft amendments at least 14 days in advance of the public hearing date.

First Town Commission Public Hearing (March or April 2020): To include Transmittal of the proposed Comprehensive Plan Amendments and First Reading of the LDR changes. **The Consultant shall prepare and deliver a presentation and lead the discussion, with assistance from staff. (CONSULTANT TRIP 2)** Consultant shall utilize visual color renderings that serve to adequately depict, identify and encourage discussion. Consultant shall provide three paper copies and one electronic copy of all required materials at least 14 days in advance of the public hearing.

Second Town Commission Public Hearing (May or June 2020 – depending on when a response is received by the state): To include Adoption of the Comprehensive Plan Amendments and Second Reading of the LDR changes. **The Staff shall prepare and deliver a presentation and lead the discussion. The Consultant may be requested to attend this public hearing to respond to questions (see additional services below).** Consultant shall provide eight paper copies and one electronic copy of the draft amendments at least 14 days in advance of the public hearing.

Exhibit II - Compensation

- A. **Fees.** The Client shall compensate DKP for professional services rendered in the performance of this Scope of Services.
1. **Base Services.** The Town shall pay the Consultant professional fees in the amount of twenty thousand dollars (\$20,000) for completing the base services described in Exhibit I.
 2. **Additional Services.** The Town shall also pay the Consultant professional fees for additional services authorized by the Town Manager.
 - (a) Certain potential additional services are described in Exhibit I, such as attending workshops or public hearings (other than those listed as CONSULTANT TRIP 1 AND 2) to respond to questions.
 - (b) Other additional services may include preparing and delivering public presentations other than those listed as CONSULTANT TRIP 1 AND 2; making additional trips to Lake Park as requested by the Town Manager; substantial expansion to the scope of services involving urban design or LDR/Comprehensive Plan amendments; preparation and distribution of Comprehensive Plan amendments to state and regional reviewing agencies; preparation of public notice materials for LDR amendments; etc.
 - (c) Additional services that have been authorized by the Town Manager shall be invoiced to the Town of Lake Park at the hourly rates indicated below.
- B. **Reimbursable Expenses.** The fees for base services and additional services include out-of-pocket expenses, such as reproduction, travel, hotel accommodations, couriers, and telephone/facsimile.
- C. **Changes to the Scope of Work.** Any change to the professional services described in this Agreement shall be authorized in writing unless documented by an appropriate Change Order. A Change Order is a written instrument duly signed by Consultant and Client, in which both parties agree to: (1) Change the Scope of Services; (2) Adjust the total fees, if any; and (3) Change the schedule, as appropriate.
- D. **Hourly Rate Schedule.** Where this Agreement provides for Client's payment to Consultant of compensation on an hourly basis, professional fees shall accrue, and compensation shall be paid in accordance with the following hourly rate schedule:

Dover, Kohl & Partners, town planning

	Principal/ Sr. Project Director	\$ 185
	Project Director	\$ 150
	Illustrators	
\$ 140		Sr. Town Planner/Urban
Designer	\$ 150	
	Town Planner/Urban Designer	\$ 110
	Clerical Staff	\$ 45
	*Travel is billed at 50% hourly rate	

Spikowski Planning Associates, planning and coding

	Principal	\$ 200
	*Travel is billed at 50% hourly rate	

- E. **Payments.** The Consultant shall submit monthly invoices for the percentage of base services that have been completed and for additional services rendered for the preceding month.
- F. **Late Payments.** All invoices are due in full upon receipt. An additional monthly charge of one and one-half (1.5%) percent will be assessed on invoices remaining unpaid for more than thirty (30) days.