VILLAGE OF ESTERO, FLORIDA

RESOLUTION NO. 15 - _____

A RESOLUTION APPROVING THE AGREEMENT OF LEWIS, STROUD & DEUTSCH, PL, PROVIDING PROFESSIONAL PLANNING SERVICES REGARDING THE VILLAGE OF ESTERO PLANNING INITIATIVE; AUTHORIZING THE VILLAGE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Estero is a newly incorporated municipality; and

WHEREAS, the Village Council of the Village of Estero has determined that it is in the best interest of the Village of Estero to provide professional planning services for the Village of Estero Planning Initiative; and

WHEREAS, Lewis, Stroud & Deutsch, PL, has proposed to provide professional planning services for the Village of Estero Planning Initiative.

NOW, THEREFORE, be it resolved by the Village Council of the Village of Estero, Florida:

SECTION ONE. The Village Council hereby approves the Agreement for Professional Planning Services proposed by Lewis, Stroud & Deutsch, PL, a copy of which is attached hereto and incorporated herein by this reference.

SECTION TWO. The Village Council authorizes the Village Mayor to execute the Agreement for Professional Planning Services with Lewis, Stroud & Deutsch, PL.

SECTION FOUR. This Resolution shall take effect immediately upon adoption.

THIS SPACE INTENTIONALLY LEFT BLANK

ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida this _____day of April, 2015.

Attest:

By:_____
Peter Lombardi
Interim Village Manager/
Custodian of Village Records

Reviewed for legal sufficiency:

By: _____
Burt Saunders, Esq.
Interim Village Attorney

VILLAGE OF ESTERO, FLORIDA

By: _____
Nicholas Batos
Mayor

254457 v1

VILLAGE OF ESTERO
AGREEMENT FOR PROFESSIONAL PLANNING SERVICES

This Agreement ("Agreement") is made as of the _____ day of April, 2015, by and between the **Village of Estero,** a Florida Municipal Corporation, whose mailing address is c/o Estero Fire Rescue District, 21500 Three Oaks Parkway, Estero, Florida 33928 ("Village") and **Lewis Stroud & Deutsch, PL,** whose mailing address is 1900 Glades Rd., Suite 251, Boca Raton, FL ("Consultant").

In consideration of the mutual promises contained in this Agreement, the Village and Consultant agree as follows:

SECTION 1 – SCOPE OF SERVICES AND SCHEDULE

1.1 The Village engages the Consultant to provide legal services related to the preparation of amendments to the comprehensive plan and land development code, as set forth more specifically in Exhibit A. Exhibit A also includes a schedule of performance for each task, which may be modified if the workshop or public hearing schedules are delayed by the Village.

1.2 The tasks in Exhibit A will support interim amendments to the comprehensive plan and land development code that would be ready for adoption 3 months after this agreement is executed. Additional tasks are included that would support the preparation of the complete new regulatory structure for mixed-use development, to be prepared in coordination with Spikowski Planning Associates according to the work plan adopted by the Village.

SECTION 2 – REMEDIES

2.1 This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Lee County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise.

SECTION 3 – WAIVER OF JURY TRIAL

3.1 To encourage prompt and equitable resolution of any litigation, each party hereby waives its rights to a trial by jury in any litigation related to this agreement.

3.2 If any legal action or other proceeding is brought for the enforcement of the Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of the Agreement, the parties agree that each party shall be responsible for its own attorney's fees.

SECTION 4 - AUTHORITY TO PRACTICE

4.1 The Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner and in accordance with applicable law. Proof of such licenses and approvals shall be submitted to the Village upon request.

SECTION 5 – SEVERABILITY

5.1 If any term or provision of the Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of the Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of the Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 6 - PUBLIC ENTITY CRIMES

6.1 As provided in Sections 287.132-133, Florida Statutes, as amended from time to time, by entering into the Agreement, Consultant certifies that it, its affiliates, suppliers, subcontractors and any other contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof.

SECTION 7 - ENTIRETY OF CONTRACTUAL AGREEMENT

7.1 The Village and Consultant agree that this Agreement sets forth the entire contract between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 8 – WAIVER

8.1 Failure of either party to enforce or exercise any right(s) under the Agreement shall not be deemed a waiver of either party's right to enforce or exercise said right(s) at any time thereafter.

SECTION 9 – COMPLIANCE

9.1 Each of the parties agrees to perform its obligations under the Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of the Agreement. In the event that either party becomes aware of a possible violation of law, regulation or administrative instruction that might affect the validity or legality of the services provided under the Agreement, such party shall immediately notify the other party and the parties shall agree on appropriate corrective action. In the event either party becomes aware that any investigation or proceeding has been initiated with respect to any of the services provided hereunder, such party shall immediately notify the other party.

SECTION 10 – INDEPENDENT CONTRACTOR

10.1 No relationship of employer or employee is created by this Agreement, it being understood that Consultant will act hereunder as an independent contractor and none of the Consultant's, officers, directors, employees, independent contractors, representatives or agents performing services for Consultant pursuant to this Agreement shall have any claim against the Village for compensation of any kind under this Agreement. The relationship between the Village and Consultant is that of independent contractors, and neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

SECTION 11 – COMPENSATION AND INVOICING

11.1 The Village shall compensate the Consultant on a fixed-fee basis for the tasks set forth in Exhibit A. This fee includes all expenses incurred by the Consultant, except as set forth in Paragraphs 12.2 through 12.4. The fee for each task is as follows:

Tasks 1 & 2	$5,000
Tasks 3 & 4	$5,000
Tasks 5 & 6	$5,000
Task 7	$5,000

TOTAL FEE: $20,000

11.2 The Consultant shall render invoices to the Village for services that have been rendered in conformity with this Agreement which shall include a brief progress statement that summarizes work

completed. Invoices will normally be paid within thirty (30) days following the Village's receipt of the Consultant's invoice at the mailing address stated above.

11.3 The Village may request attendance by Nancy Stroud at workshops, meetings, presentations, or public hearings beyond those specified in Exhibit A. The Village may also request other professional services not contained in Exhibit A. In either case, time required for attendance, preparation, and other professional services will be invoiced at $225 per hour. The Village will reimburse the Consultant for travel expenses that require overnight stays, including mileage and out of pocket costs.

11.4 Invoices for extra attendance and other professional services shall be itemized to specifically and concisely identify each task performed and should reflect the actual time spent on each task, using 1/10 of an hour increments. Each billing entry must be sufficiently descriptive so that it can be determined exactly what professional service was provided and the appropriateness of the related time charge can be assessed.

11.5 The Village will reimburse the Consultant for any out-of-pocket expenses directly related to attendance at additional meeting or for professional services beyond those specified in Exhibit A, including, but not limited to, long distance telephone charges, postage charges, courier fees, printing, and photocopying. Payment for some of these fees is outlined more specifically below.

(a) In-house photocopying will be paid at the rate of ten cents (.10) per page.

(b) The Village will not pay for local facsimile transmissions.

(c) Long distance telephone calls must state the number of calls, date, length of call, and per minute cost.

(d) Any travel, per diem, mileage, or meal expenses, which may be reimbursable, must be approved in advance (orally) and will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statues.

(e) For all disbursements, the Village requires copies of paid receipts, invoices, or other documentation acceptable to the Village. Such documentation must be sufficient to establish that the expense was actually incurred and necessary in the performance of professional services provided.

11.6 This is a non-exclusive Agreement and the Village does not guarantee that any services beyond those stated herein will be requested of the Consultant.

SECTION 12 - INSURANCE

12.1 The Consultant shall maintain during the term of this Agreement all insurance coverage as required hereunder. Such insurance policy(s) shall be issued by insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the Village and the Consultant.

Type of Coverage	Amount of Coverage
Professional liability/ Errors and Omissions	$300,000 annual aggregate

Commercial General Liability Insurance	$1,000,000 per occurrence $2,000,000 aggregate
Automobile Liability (optional /per case basis)	$1,000,000 combined Single Limit
Workers' Compensation	Must be in accordance with State and Federal Laws (no minimum amount)

Proof of all insurance coverage shall be furnished to the Village by way of an endorsement to same or certificate of insurance upon request by the Village. The Village shall be identified as an "Additional Insured" on general and auto liability. Failure to comply with the foregoing requirements shall not relieve Consultant of its liability and obligations under this Agreement.

SECTION 13 – PUBLIC RECORDS

13.1 Pursuant to section 119.0701, Florida Statutes, the Consultant shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if applicable, specifically agrees to:

(a) Keep and maintain all public records that ordinarily and necessarily would be required by the Village to keep and maintain in order to perform the services under this Agreement.

(b) Provide the public with access to said public records on the same terms and conditions that the Village would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining said public records and transfer, at no cost, to the Village all said 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 from Chapter 119, Florida Statutes, disclosure requirements. All records stored electronically must be provided to the Village in a format that is compatible with the information technology systems of the Village.

SECTION 14 – TERMINATION

14.1 This agreement may be terminated by either party upon seven days written notice should either party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination. This agreement may also be terminated upon seven days written notice if the project is permanently abandoned or terminated without cause. In either event, the Village shall compensate the Consultant for services rendered up to the date of termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement for Professional Planning Services to be executed as of the day and year set forth above.

VILLAGE OF ESTERO

ATTEST:

By:_____
Interim Village Clerk

By:_____
Nick Batos, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:_____
Interim Village Attorney

CONSULTANT: Lewis Stroud & Deutsch, PL

By: _____

Print Name: Nancy E. Stroud

Title: Member, Lewis Stroud & Deutsch, PL

EXHIBIT A

Task One – Regulatory Framework and Boundary Maps (months 1-3). Assist planning consultants in the development of the proposed mixed-use regulatory framework for incorporation in the interim comprehensive plan amendments, specifically in regard to potential legal issues such as vested rights, property rights, and legal defensibility.

Task Two – Transitional Land Development Regulations (months 1-3). Analyze transitional land development regulations for legal issues, and review draft interim code changes and implementing ordinance for legal defensibility. Prepare revisions as appropriate.

Task Three – Regulating Plans and Supporting Standards (months 2-10). Attend two public workshops to gain insight into public concerns related to legal issues and to address any emerging legal issues.

Task Four – Concepts for Village Design Office (months 5-7). General assistance as needed (minimal time is anticipated) related to proposed approaches to the administration of regulations and design guidelines by a Village Design Office.

Task Five – Comprehensive Plan Amendments (months 4-10). Assist as appropriate in preparation and review of draft comprehensive plan policies and supporting data and analysis. Consult with Council regarding the state review and adoption process.

Task Six – Land Development Code Amendments (months 4-10). Perform legal analysis of proposed code amendments to adopt conceptual regulating plans and new mixed-use standards, and streamlined review process. Assist in drafting regulations that are legally defensible. Consult with Council regarding code amendment process.

Task Seven – Presentations and Public Hearings (months 3-12). Attend up to seven public meetings or hearings to provide legal backup and to learn of potential community concerns that may form the basis for legal challenges.