

CONSULTING AGREEMENT

I. The Parties. This Consulting Agreement ("Agreement") is made effective as of _____, by and between **KCT Consulting Services** of 9738 US HWY 441, STE 104, Leesburg, Florida, 34788 ("Consultant") and the **Town of Howey-in-the-Hills** of 101 N Palm Ave, Howey-in-the-Hills, Florida, 34737 ("Client").

II. Services. Consultant agrees to provide the following services ("Services"):

Urban and Regional Planning and Environmental Consulting Services - Assignments will include special projects, analyses and work intended to assist the Town's Development Services Department with development review. Urban planning Services may include, but are not limited to:

- Transportation Analyses
- Housing Needs Study including Housing Affordability
- Assigned Certified Planner to review development applications (as needed)
- Comprehensive Plan and Land Development Regulation policies

III. Term. The term of this Agreement shall commence on _____, 2024, and, unless the Parties expressly agree otherwise, shall expire three (3) years thereafter, on _____, 2024. This Agreement may be renewed on an annual basis for additional consecutive one (1) year periods, if agreed to in writing by both parties, at least sixty (60) days prior to the expiration of this Agreement, including any periods of renewal.

IV. Payment. In consideration for the Services provided, the Consultant is to be paid the following:

Hourly Rates for Professional, Technical and Support Staff Services:

- AICP Planner – (Other than expert witness) - \$125.00 per hour.
- Project Manager - \$125.00 per hour.
- Office Manager - \$60.00 per hour.

- Planning Tech - \$60.00 per hour.
- Expert Witness (Upon Written Authorization from Town) Kelly Turner, AICP, CFM - \$165.00 per hour.
- Outside Consultant – Actual Cost
- Notary Service - \$10.00
- Postage – Outside Cost
- Prints – Outside Cost

* The hourly rate shall include meeting preparation and travel time if applicable.

Other Charges:

Charges for Development Application Review shall be billed on an hourly basis per the rates listed above. Invoices for fees related to the large scale application reviews shall be forwarded to the Town monthly on separate invoices.

The fees for special projects initiated by the Town shall be estimated in advance upon notification by the Town of its desire to undertake each project.

Statements

The Consultant will submit a statement of its fees for services rendered and costs incurred to the Client or its designee. The portion of the statement setting forth the fees for services rendered shall specify for each entry a description of the service performed, the date such was performed, the person performing the service, the amount of time expended therefore, the rate charged per hour, and the total fee. The section of the statement setting forth the costs to be reimbursed shall contain an itemization of all such costs, the date each cost was incurred, and the amount of such cost. Upon request, the Consultant shall submit copies of appropriate receipts and other evidence of the incurring of the expense.

Each statement of costs and fees shall be deemed to warrant that the statement sets forth only the actual time spent and only the actual costs incurred. The Client shall be entitled to rely on this warranty.

The Client or its designee will authorize payment of fees and costs, upon review and approval of the statement, if such fees and costs for any particular matter are reasonable and justified.

V. Payment Interval. Consultant shall be paid, in accordance with Section IV, when the Consultant sends an invoice to the Client. After the Client receives the invoice by the Consultant, it shall be paid within 30 days and otherwise shall be governed by the Local Government Prompt Payment Act, Part VII of Chapter 218 of the Florida Statutes.

VI. Contingency Fee. There shall not be a contingent-fee basis as part of this Agreement.

VII. Retainer. The Client is not required to pay a retainer as part of this Agreement.

VIII. Expenses. The Consultant shall be responsible for all expenses related to providing the Services under this Agreement except any "out-of-pocket reimbursable" expenses.

Out-of-pocket and/or Reimbursable expenses are considered to be an expense that requires the Consultant to pay a third party as a direct or indirect result of providing the Services such as printing and production costs.

However, the Consultant will be required to pay for their internal expenses which includes, but is not limited to, typical office supplies, equipment, operating costs, business costs, employment costs, taxes, Social Security contributions and/or payments, disability insurance, unemployment taxes, and any other cost that may or may not be in connection with the Services provided by the Consultant.

Client agrees to pay the Consultant within 30 days of receiving notice of any expense directly associated with the Services.

Reimbursement for such expenses will be made only in the exact amounts incurred by the Consultant, without any mark-up or multiplier. The Consultant shall submit a statement of the reimbursable expenses actually incurred to the Client or its designee. The section of the statement setting forth the costs to be reimbursed shall contain an itemization of all such costs, the date each cost was incurred, and the amount of such cost. Upon request, the Consultant shall submit copies of appropriate receipts and other evidence of the incurring of the expense.

IX. Termination Clause. The Consultant or Client may terminate this Agreement at any time with notice of at least 45 day(s).

X. Return of Records. As requested by Howey-in-the-Hills, Company agrees to deliver to Howey-in-the-Hills at the end of the term of this Agreement, or at any other time Howey-in-the-Hills may request, all lists, memoranda, notes, plans, records, hardware, software, and other documentation and data belonging to Howey-in-the-Hills, which Company may possess or have under his or her control and which may have been produced prior to and including the date of termination. Company shall also require that all subcontractors or employees agree in writing to be bound by the provisions of this Section.

XI. Disputes. If any dispute arises under this Agreement, the Consultant and the Client shall negotiate in good faith to settle such dispute. If the parties cannot resolve such dispute themselves, then either party may submit the dispute to mediation by a mediator approved by both parties. If the parties cannot agree with any mediator or if either party does not wish to abide by any decision of the mediator, they shall submit the dispute to arbitration by any mutually acceptable arbitrator, or the American Arbitration Association (AAA). The costs of the arbitration proceeding shall be borne according to the decision of the arbitrator, who may apportion costs equally or in accordance with any finding of fault or lack of good faith of either party. If either party does not wish to abide by any decision of the arbitrator, they shall submit the dispute to litigation. Any dispute arising out of or relating to this Agreement shall be subject to the exclusive venue of the Circuit Court for the Fifth Judicial Circuit, in Lake County, Florida.

XII. Liability Insurance. The Consultant agrees to bear all responsibility for the actions related to themselves and their employees or personnel under this Agreement. In addition, the Consultant agrees to procure insurance coverage in accordance with the Town of Howey-in-the-Hills General Terms & Conditions attached hereto.

XIII. Legal Notice. All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in-person or deposited in the United States Postal Service via Certified Mail with return receipt. If a notice or other communication is received after 5:00 p.m. on a business day at the location specified

in the address for the receiving party, or on a day that is not a business day, then the notice is deemed received at 9:00 a.m. on the next business day.

Such notices or other communications must be addressed to the receiving party at the addresses below:

For the Town of Howey-in-the-Hills:

Town Clerk, John Brock

Town of Howey-in-the-Hills
101 N. Palm Ave
Howey-in-the-Hills, FL 34737
P: 352-324-2290
F: 352-324-2126

For KCT Consulting Services:

Kelly Turner
9738 US HWY 441 STE 104
Leesburg, FL 34788
P: 352-366-9520

XIV. Waiver of Contractual Right. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

XV. Independent Contractor Status. The Consultant, under the code of the Internal Revenue (IRS), is an independent contractor and neither the Consultant's employees or contract personnel are, or shall be deemed, the Client's employees. In its capacity as an independent contractor, the Consultant agrees and represents:

- a.) Consultant has the right to perform Services for others during the term of this Agreement;
- b.) Consultant has the sole right to control and direct the means, manner, and method by which the Services required under this Agreement will be performed; Consultant shall select the routes taken, starting and ending times, days of work, and order the work that performed;

- c.) Consultant has the right to hire assistant(s) as subcontractors or to use employees to provide the Services under this Agreement.
- d.) Neither Consultant nor the Consultant's employees or personnel shall be required to wear any uniforms provided by the Client;
- e.) The Services required by this Agreement shall be performed by the Consultant, Consultant's employees or personnel, and the Client will not hire, supervise, or pay assistants to help the Consultant;
- f.) Neither the Consultant nor the Consultant's employees or personnel shall receive any training from the Client for the professional skills necessary to perform the Services required by this Agreement; and
- g.) Neither the Consultant nor Consultant's employees or personnel shall be required by the Client to devote full-time to the performance of the Services required by this Agreement.
- h.) Neither the Consultant nor Consultant's employees shall hold themselves out as employees, agents, or servants of the Client.
- i.) The Consultant and Consultant's employees do not have the power or authority to bind the Client in any promise, agreement, or representation other than as specifically provided in this Agreement.

XVI. State and Federal Licenses. The Consultant represents and warrants that all employees and personnel associated shall comply with federal, state, and local laws requiring any required licenses, permits, and certificates necessary to perform the Services under this Agreement.

XVII. Payment of Taxes. Under this Agreement, the Client shall not be responsible for:

- a.) Withholding FICA, Medicare, Social Security, or any other Federal or State withholding taxes from the Consultant's payments to employees or personnel or make payments on behalf of the Consultant;
- b.) Making Federal and/or State unemployment compensation contributions on the Consultant's behalf; and
- c.) Making payments of taxes incurred while performing the Services under this Agreement, including all applicable income taxes and, if the Consultant is not

a business entity, all applicable self-employment taxes. Upon demand, the Consultant shall provide the Client with proof that such payments have been made.

XVIII. Indemnity. Consultant shall release, defend, indemnify, and hold harmless the Client and its officers, agents, and employees from all suits, actions, or claims of any character, name, or description including reasonable attorney fees, brought on account of any injuries or damage, or loss (real or alleged) received or sustained by any person, persons, or property, arising out of services provided under this Agreement or Consultant's failure to perform or comply with any requirements of this Agreement including, but not limited to any claims for personal injury, property damage, or infringement of copyright, patent, or other proprietary rights.

XIX. Assignment and Delegation.

a.) Consultant is responsible for all services and work to be performed in connection with this Agreement.

b.) With prior written approval by Client, Consultant may, as appropriate and in compliance with applicable law, subcontract the performance of services set forth in this Agreement, provided however, that Consultant shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract. Consultant shall not enter into subcontracts in which Client could be held liable to a subcontractor for any expenses or liabilities. Consultant shall defend and hold Client harmless of any liabilities incurred under any of the subcontracts entered into by Consultant. Consultant shall be liable for all work performed and expenses incurred as a result of any subcontract. Subcontractors are required to comply with the terms of this Agreement.

c.) The Consultant shall be responsible for any confidential or proprietary information that is shared with the Subcontractor in accordance with this section. If any such information is shared by the Subcontractor to third parties, the Consultant shall be made liable.

d.) Any and all contracts that Consultant enters into under this Section shall incorporate and require the subcontractor to comply with all of the provisions herein.

XX. Governing Law. This Agreement shall be governed by the laws of the State of Florida.

XXI. Severability. This Agreement shall remain in effect in the event a section or provision is unenforceable or invalid. All remaining sections and provisions shall be deemed legally binding unless a court rules that any such provision or section is invalid or unenforceable, thus limiting the effect of another provision or section. In such case, the affected provision or section shall be enforced as so limited.

XXII. Contract Documents. The Contract Documents, which comprise the entire Contract between Consultant and Client and which are further incorporated herein by reference, consist of the following:

- a. This Agreement,
- b. Request for Qualifications (RFQ),
- c. Consultant's RFQ Documents,
- d. Permits/Licenses,
- e. All RFQ Addenda issued prior to RFQ Opening Date, and
- f. Town of Howey-in-the-Hills General Terms & Conditions attached hereto.

This Contract Documents represent the entire agreement between the parties and supersedes any prior agreements, promises, conditions, or understandings between the Client and Consultant. This Agreement may be modified or amended only by written agreement signed by both parties.

Consultant's Signature _____ **Date** _____

KCT Consulting Services

Client's Signature _____ **Date** _____

Town of Howey-in-the-Hills