

THIS LEGAL SERVICES AGREEMENT (the “Agreement”) is made and entered into effective as of the 2ND day of October, 2024 (the “Effective Date”), by and between THE TOWN OF NORTH TOPSAIL BEACH, a body politic and corporate of the State of North Carolina (the “Town”) and SUMRELL SUGG, P.A., a North Carolina professional corporation (the “Contractor”).

RECITALS

WHEREAS, the Town solicited proposals from various contractors and awarded the contract to Contractor based on Contractor’s response to the Town’s Request for Proposals.

WHEREAS, the Town desires to engage Contractor to perform certain services, and Contractor desires to perform such services, all on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Duties of Contractor. Effective as of the date of this Agreement, Contractor agrees to supply personnel as specifically requested in writing by the Town to perform the services described in Exhibit A attached hereto.

2. Independent Contractor Relationship. Contractor is an independent contractor and is solely responsible for all taxes, withholdings, and other similar statutory obligations in connection with the personnel supplied and services provided by Contractor pursuant to this Agreement, including, but not limited to, workers’ compensation insurance and unemployment insurance. Nothing in this Agreement shall be deemed to create an agency, partnership, or joint venture between the parties, nor shall this Agreement be interpreted or construed as creating or establishing the relationship of employer and employee between the Town and Contractor. Neither party hereto has the authority to act on behalf of or to enter into any contract, incur any liability or make any representation on behalf the other party. It is expressly understood that the Contractor is an independent contractor in every respect.

3. No Exclusive Duty. The Contractor shall devote sufficient time, attention, personnel and other resources to perform the services described herein, provided, however, the Contractor shall not be required to perform work exclusively for the Town and Contractor may have other business interests and may engage in other activities in addition to those relating to the Town.

4. Term. The term of this Agreement shall commence on the Effective Date and shall be in full force and effect for one (1) year (the “Initial Term”). Upon expiration of the Initial Term, this Agreement shall be automatically extended for additional one (1) year periods unless terminated by either party pursuant to the terms of this Agreement.

5. Termination. Contractor is providing the services described herein pursuant to N.C. Gen. Stat. § 160-173; therefore this Agreement may be terminated by the Town at any time, with or without cause. Contractor may terminate this Agreement with or without cause and at any time for any reason without any further obligation by providing the Town with thirty (30) days’ written notice. In the event of termination in accordance with this Paragraph, the Town shall pay Contractor for services rendered (as set forth in Paragraph 6 of this Agreement) through the effective termination date and the Town shall be liable for the same until such amounts are fully and finally settled.

6. Compensation. The Town will pay Contractor in accordance with this Agreement and pursuant to the payment schedule contained in Exhibit A.

7. Taxes. Contractor shall be solely responsible for the payment of all taxes and/or assessments imposed on the payments of compensation for the performance of services outlined herein, including, without limitation, any unemployment insurance or tax, self-employment tax, federal, state and foreign income taxes, and any federal social security payment or similar taxes. Notwithstanding, the Town may withhold from any amounts payable under this Agreement such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation; provided, however, that the Town shall provide the Contractor with written substantiation of withholding and remittance of such taxes upon Contractor’s request.

8. No Breach. Each party hereby represents and warrants to the other party that: (a) it has all right, power and authority to grant the rights granted herein and to perform all of its obligations hereunder; (b) by entering into this Agreement and performing the obligations herein, it will not breach or violate any agreement, charter, instrument or other document to which it is a party or otherwise bound; and (c) it is currently in compliance and, throughout the term of this Agreement, it shall comply, in all material respects, with all applicable laws, rules and regulations.

9. Insurance. Contractor shall maintain as a condition precedent to this Agreement an approved and satisfactory professional liability insurance policy in the minimum amount of \$2,000,000 per claim and \$2,000,000 aggregate. Contractor shall furnish the Town evidence of such approved and satisfactory insurance upon request by the Town.

10. Assignment. This Agreement shall not be assigned, in whole or in part, by either party without prior written consent of the of the non-assigning party, which shall not be unreasonably withheld.

11. Non-Discrimination. Contractor will not discriminate against any person, employee or applicant for work or employment because of race, color, religion, sex, sexual orientation, national origin or any other class protected by law.

12. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Contractor:

Sumrell Sugg, P.A.
C/o James H. Ferguson, III
P.O. Drawer 889
New Bern, NC 28563

If to the Town:

North Topsail Beach
C/o Alice Derian
Town Manager
2008 Loggerhead Ct
North Topsail Beach, NC 28460

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The parties' respective rights under this Agreement are cumulative and either party's exercise or enforcement of any right or remedy under this Agreement will not preclude such party's exercise or enforcement of any other right or remedy which such party is entitled to enforce at law or in equity.

(e) Contractor's or the Town's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right Contractor or the Town may have hereunder shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(f) If any provision of this Agreement shall be deemed unlawful, void or unenforceable for any reason, it shall be deemed severable, and in no way shall effect the validity or enforceability of, the remaining provisions of this Agreement.

(g) This Agreement shall not be construed or interpreted in favor of or against Contractor or the Town on the basis of draftsmanship or preparation of the Agreement.

(h) From and after the date this Agreement is signed by both Town and Contractor, this Agreement shall supersede all prior and contemporaneous agreements and understandings between Contractor and the Town, whether written or oral, with respect to the subject matter hereof.

(i) This Agreement can only be amended or modified in a written document signed by both Contractor and the Town.

(j) All rights and obligations of the parties hereto that either expressly, or by their nature, survive the expiration or termination of this Agreement shall survive such expiration or termination.

(k) This Agreement and any amendment, waiver, approval or consent relating hereto may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The delivery by any party of an executed signature page to this Agreement or any amendment, waiver, approval or consent relating hereto by facsimile transmission or by electronic email in Adobe Corporation's Portable Document Format (or PDF) shall be deemed to be, and shall be enforceable to the same extent as, an original signature page hereto or thereto. Any party who delivers such a signature page agrees to later deliver an original counterpart to any party that requests it.

(l) The following access to records requirements apply to this Agreement but in no way affect communications or documents that would otherwise be privileged or confidential under the laws of the State of North Carolina:

(i) Contractor agrees to provide the Town, the State of North Carolina, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(ii) Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(m) If at any time grant assistance will be used to fund any portion of the Agreement, Contractor will comply will all applicable federal and state law, regulations, executive orders, policies, procedures, and directives.

(n) As a condition of payment for services rendered under this agreement, Contractor shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes to the extent legally applicable. Further, if Contractor provides the services to the Town utilizing a subcontractor, Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes to the extent legally applicable. Contractor shall verify, by affidavit, compliance of the terms of this section upon request by the Town.

(o) Contractor certifies that it is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Individuals or companies on the Final Divestment List are ineligible to contract or subcontract with Local Government Units. (N.C. Gen. Stat. § 147-86.60) It is the responsibility Contractor to monitor compliance with this restriction.

(p) The Contractor certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81. It is the responsibility of Contractor to monitor compliance with this restriction.

IN WITNESS WHEREOF, the parties have executed this Legal Services Agreement as of the date first written above.

-CONTRACTOR-

-TOWN-

SUMRELL SUGG, P.A.

NORTH TOPSAIL BEACH

By: _____

James H. Ferguson, III

By: _____

D. Michael Benson
Mayor Pro-Tem

ATTEST:

Town Manager

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Town Finance Officer

Date: _____

EXHIBIT A
DESCRIPTION OF SERVICES AND COMPENSATION

Compensation under this Agreement shall be as follows and shall be invoiced to Town on a monthly basis with payment due thirty (30) days from the date such invoice is received by the Town.

The following services shall be rendered by Contractor to Town, and the fee for such services shall not exceed \$36,000.00 for the first year of this Agreement, billed at \$275.00 per hour, plus costs and expenses:

- Attend Board of Alderman meetings
- Attend Planning Board meetings, as requested (in-person or virtually)
- Attend Board of Adjustment meetings, as requested
- Attend other Town board meetings, as requested
- Provide all general legal services
- Conferences, correspondence and telephone conversations
- Prepare and/or review of contracts, policies, resolutions, ordinances, etc.
- Monitor statutory changes and judicial decisions
- Periodic review and update of ordinances
- Periodic training seminars
- Attend department head and other internal meetings, as requested
- Economic development issues in general

The following services shall be rendered by Contractor to Town on an as-needed basis and are not subject to the “not-to-exceed” amount stated above but are instead billed at \$275.00 per hour, plus cost and expenses, **or** under Contractor’s customary flat fee, plus costs and expenses, for such service at the time the service is rendered:

- Litigation, appeals, mediation, arbitration and similar alternative dispute resolutions
- Financings
- Construction and improvement projects
- Economic development projects (but not general economic development issues)
- Matters before any non-Town commission, agency, etc.
- Real estate transactions
- Major or complete ordinance or policy restatements
- Matters where legal fees are paid by third-parties or otherwise recoverable
- CDBG, CHAF, HMGP and other community assistance projects (including beach renourishment projects)
- Other matters as may be agreed upon in advance

The Parties agree to review and negotiate this fee structure after the first year of this Agreement.