

AGREEMENT

This Agreement is by and between the Town of Nolensville, Tennessee ("Client") and Town Planning & Urban Design Collaborative L.L.C. (also called "TPUDC") ("Consultant") (collectively, the "Parties") entered into on June 21, 2022.

PREAMBLE

The Client has asked TPUDC to assist with design review services for the Town of Nolensville (the "Project") which are more fully described below, and the Consultant has agreed to provide such services.

This Agreement contains the following Appendices:

- A: Scope of Services
- B: Rate Schedule

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

A. SCOPE OF SERVICES

The Consultant shall perform the scope of services as identified in **Appendix A: Scope of Services**.

B. PROJECT SCHEDULE

The project is on-going.

C. FEE AND BILLING

- C.1. The Consultant will provide the services described in the Scope of Services on an hourly basis according to the rates in **Appendix B: Rate Schedule**, not to exceed \$5000 per review without authorization of the Client.
- C.2. The Consultant shall invoice the Client monthly based on the number of hours worked as of the invoice date.
- C.3. Invoices for services rendered and at-cost expenses incurred pursuant to this Agreement shall be due as within 30 days of receipt by Client. Any invoice unpaid after 60 days of submission to Client shall bear interest at the rate of 1.5% compounded monthly.

D. FORMAT OF COMPLETED REVIEW DOCUMENTS

Consultant shall provide final work products to Client in digital file format, which will be the property of Client.

E. ADDITIONAL SERVICES AND CHANGES TO THE SCOPE OF SERVICES

The Consultant's undertaking to perform professional services extends only to the services specifically described in **Appendix A: Scope of Services**. Any services not specifically provided for in the Scope of Services

will be considered Additional Services and performed on a labor fee plus at-cost expense basis using the hourly rates presented in **Appendix B: Rate Schedule** of this Agreement.

Any changes or additions to the Scope of Services described in this Agreement shall not be authorized unless documented in writing 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, and/or (3) Change the project schedule, as appropriate.

F. CLIENT’S RESPONSIBILITIES

- F.1. Client shall be responsible for the following items in conjunction with the Project:
- F.2. Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions. Client may designate a staff position and mailing address, as well as an additional contact to be copied on all information provided.
- F.3. Client will provide, on a timely basis, the submitted plans for review.
- F.4. Client will attend scheduled project meetings with Consultant.
- F.5. The Consultant shall be entitled to rely on the completeness and accuracy of all information provided by the Client unless patently erroneous. Any revisions to the Consultant’s deliverables caused by inaccurate, outdated, or incomplete information provided by the Client, will be considered an Additional Service.

G. DELAY OR PREVENTION OF PROVISION OF SERVICES NOT THE FAULT OF THE PARTIES

In the event that performance of the Basic Services and/or Additional Services is delayed or prevented due to an unforeseen condition or event beyond the Parties’ control, including but not limited to: labor disputes, strikes, fire, riot, war, terrorism, pandemic/epidemic, Acts of God, a natural disaster in the vicinity of the study area, any one of the Parties’ offices, the offices of any one of Parties’ consultants or in an area through which any member of the team may be traveling in order to provide Services, the injury or death of Consultant, or any other causes beyond the control of the non-performing party, the Parties shall not be responsible for such delay or failure to perform and will not be liable for the consequences of any of the foregoing.

H. TERMINATION

- H.1. If the Client fails to make payment when due for service and reimbursable expenses as previously specified herein, the Consultant may, upon thirty days written notice, terminate the Agreement. Unless payment in full is received by the Consultant within thirty days of the receipt of the notice, the termination shall be final without further notice. In the event of such termination, the Consultant shall have no liability for delay or damage caused by such termination.
- H.2. The Client may terminate this agreement for cause after giving the Consultant written notice and an opportunity to cure.
- H.3. The Client may terminate this agreement without cause upon thirty days notice to Consultant.
- H.4. After the effective date of termination, the Client shall forfeit all rights to receive additional copies of documents previously received. Client shall receive all outstanding documents paid for at or after the time of termination.
- H.5. In the event this Agreement is terminated by either party, Client shall pay Consultant for all approved direct costs and Services and/or work undertaken in performance of its obligations hereunder up to the date of termination, including any Services performed but not invoiced as of the date of termination.

I. PUBLICATION

- I.1. The Consultant shall have the right to include representations of the work performed by Consultant among promotional and professional materials.
- I.2. If the Client publishes or causes to be published representations related to Project, the Client agrees to include reference to the Consultant as follows: "Credit: Town Planning & Urban Design Collaborative L.L.C., www.tpudc.com".

J. MEDIATION, LITIGATION & ATTORNEYS' FEES

In the event any disputes arise related to the subject matter of this Agreement and the parties cannot agree upon a resolution, the issue(s) shall first be submitted for mediation. The venue of any action deemed necessary by either party hereto and in construction, interpretation or enforcement of this Agreement shall be a court of competent jurisdiction in Williamson County, Tennessee. In the event of any litigation or disputes regarding this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and all costs at all trial and appellate levels.

K. LIMITATIONS OF LIABILITY AND RESPONSIBILITIES

- K.1. The Consultant only provides Design Review Services for design and aesthetic purposes as well as to address any potential conflicts with the Zoning Ordinance and Design Review Manual (or as such design standards are updated by the Board of Commissioners) and does not assume responsibility or liability for any of the following:
 - i. Structural adequacy, capacity, or safety features;
 - ii. Non-compatible or unstable soil conditions, erosion, etc.;
 - iii. Compliance with building codes, safety requirements, and governmental laws, regulations, or ordinances;
 - iv. Performance or quality of work contractors not employed by Consultant; or
 - v. Any other liability related to the project.

L. MISCELLANEOUS PROVISIONS

- L.1. The Agreement shall be governed by the law of the State of Tennessee in the United States of America.
- L.2. The duties, responsibilities, and limitations of authority of the Consultant discussed in the Agreement shall not be restricted, modified, or extended without written agreement of the Client and the Consultant.
- L.3. The Client and the Consultant, respectively, bind themselves, their partners, successors, assigns, and legal representatives of the other party to the Agreement and to the partners, successors, assigns, and legal representatives of the Client with respect to all covenants of the Agreement. Neither the Client nor the Consultant shall assign the Agreement without the written consent of the other.
- L.4. The Agreement represents the entire and integrated agreement between the Client and the Consultant and supersedes all prior negotiations, representations, or agreements either written or oral. The Agreement may only be amended in writing, signed by both the Client and the Consultant.
- L.5. Nothing contained in the Agreement shall create a contractual relationship and/or a third-party beneficiary relationship with a third party.
- L.6. Title and paragraph headings are for reference and are not a part of the Agreement.
- L.7. In the event of conflict between the terms of the Agreement and any terms or conditions contained in any attached documents, the terms of the Agreement shall rule.
- L.8. No waiver or breach of any provision of the Agreement shall constitute a waiver of any subsequent breach of the same or any provision hereof, and no waiver shall be effective unless made in writing.

- L.9. Should any provision, paragraph, sentence, word or phrase contained in the Agreement be determined to be invalid, illegal or otherwise unenforceable, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with law, or else the same shall be deemed severable. In any event, the remaining terms and provisions of the Agreement shall remain unmodified and in full force and effect.
- L.10. The appendices attached hereto are made a part hereof as if fully set forth herein.
- L.11. Consultant agrees to indemnify and hold Client harmless and any of its commissioners, subsidiaries, agents or employees from and against all claims, demands, liabilities, suits, damages, or expenses, including reasonable attorney's fees, on account of any third party claims, injuries to or death of any person or persons, or damage to any property occurring directly or indirectly from the performance of work hereunder by Consultant or its employees, agents, servants, associates or subcontractors/sub-consultants however such injuries or death or damage to property may be caused.
- L.12. Consultant shall comply with all laws and ordinances, and the rules, regulations, or orders of all public authorities relating to the performance of the work under and pursuant to this Agreement. If any of the documents or work products are at variance with any such laws, ordinances, rules, regulations, or orders, Consultant shall notify Client promptly on discovery of such variance.
- L.13. All notices and communications given pursuant to the Agreement shall be in writing and delivered by email, personal service, or by registered mail to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; if by mail, on the fifth day after being post-marked or the date of the actual receipt, whichever is earlier; or, if by email, on the day the email recipient acknowledges receipt of the email.

CLIENT:
Town of Nolensville
Attention: Victor H. Lay, P.E., Town
Manager
7218 Nolensville Road
Nolensville, TN 37135
vlay@nolensvilletn.gov

CONSULTANT:
Town Planning & Urban Design Collaborative L.L.C.
Attention: W. Brian Wright
1027 Westhaven Boulevard
Franklin, Tennessee 37064
brian@tpudc.com
with cc: to jessica@tpudc.com

WITH A COPY TO:
L. Gino Marchetti, Jr., Town Attorney
Taylor, Pigue, Marchetti & Blair, PLLC
2908 Poston Avenue
Nashville, TN 37203
gmarchetti@tpmblaw.com

M. SIGNATURES

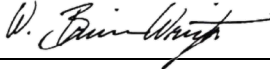
IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the date first written above.

ACCEPTED AND AGREED:

Client
Town of Nolensville, TN

Consultant
Town Planning & Urban Design Collaborative L.L.C.

By: _____
Derek Adams, Mayor

By:  _____
W. Brian Wright
Principal

Date: _____

Date: June 24, 2022

APPROVED AS TO FORM:

By: _____
L. Gino Marchetti, Jr., Town Attorney

N. APPENDICES

APPENDIX A: SCOPE OF SERVICES

The Consultant will provide design review services for development and building submittals on behalf of the Town. The review will determine compliance of submitted drawings with the Zoning Ordinance, Comprehensive Plan, Design Review Manual (which may be updated by the Board of Commissioners), the vision of the community, and/or other criteria. Site layout, elevations, floor plans, grading plans, landscape plans, and other related submittal elements may be reviewed. The Consultant will provide comments and markups of the drawings to the Town Staff. If revisions to the reviewed drawings are required, the Consultant will conduct an additional review of the revised plans to ensure that they incorporated all comments from the prior review.

APPENDIX B: 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:

<u>Position</u>	<u>Hourly Rates</u>
Principal	\$300
Director	\$225

Consultant reviews its hourly rates each calendar year and reserves the right to modify its rate schedule at such time. Consultant will provide Client with written notification in advance of any such change.