

AGREEMENT FOR THE PERFORMANCE OF
CONSULTING SERVICES
CALENDAR YEAR 2022/2023

This Agreement (the “Agreement”) is entered into and made effective as of the ____ day of ____, 2022, by and between **ms consultants, Inc., 115 West Washington Street, Suite 1310, Indianapolis, Indiana, 46204** (“Consultant”) and **Town of Thorntown, Indiana** (“Client”).

In consideration of the mutual promises, covenants, and agreements contained herein, which the parties acknowledge are good, valuable and sufficient consideration for this Agreement, the parties, intending to be legally bound, promise, covenant and agree as follows:

SECTION I. SERVICES TO BE PERFORMED BY CONSULTANT

1.1 Description of Basic Services. Client authorizes Consultant to perform the below listed services (“Basic Services”):

On-site and Mobile Administrative Management:

- a) On-site consulting a minimum of 1 day each week of each month to include response to the public, response to the council and clerk treasurer, response to the staff, ordinance review, comprehensive plan review, municipal administrative strategic plan review and development, process controls (SOPs) review.
- b) Develop a list of administrative process controls (SOPs)
- c) Attend and organize a minimum of 2 meetings per month (Town Board/Council, RDC, Plan Commission, BZA, Park Board, etc). Meeting to be designated by the Client.
- d) If needed, assist client with meeting preparation including the completion of an interactive agenda, ordinance and resolution preparation assistance.
- e) Assist the Planning commission/staff
- f) Daily monitoring and response for an info@ or Management@ email address provided by the Client.

- g) Daily monitoring and response for a designated municipal phone number/voicemail account provided by the Client.
- h) Assist with daily monitoring and management of the Clients current website.
- i) Planning and Zoning assistance including Comprehensive plan review and facilitation, and UDO review and assessment.
- j) Public Outreach programs including branding and community development planning.
- k) Advise Client on the engagement of new contractors, consultants and vendors
- l) Assist Client on the administration and enforcement of ordinances and codes
- m) Assist Client in the review and assessment of various policies and codes
- n) Assist the client with the day to day operations of the municipal utility and the administration of the Utility Service Board.
- o) Assist Client with a cursory infrastructure review including water, wastewater and storm water infrastructure, pedestrian infrastructure and highway infrastructure.
- p) Assist the client with staff organization and direction.

Economic Development Management Consultation

- a) Assess existing economic develop plans.
- b) Provide consultation on best practices to implement economic development strategy.
- c) Provide consultation on the creation and adoption of best practice economic development policy.
- d) Provide consultation on TIF, SID and other economic development tools.

Grant Application and Administration Services

- a) Provide the client with a comprehensive list of available funding sources from local, state, federal, not for profit and private funding sources for priority projects.
- b) Assist the client with grant application processing including research and narrative.
- c) Assist with grant administration unless otherwise prohibited by federal, state or local regulations.

Strategic Direction and Program Development:

- a) Assess the current or work with the Town Council to advise and develop a new town economic and strategic vision to include:
 - 1) Public works projects capital investment prioritization.
 - 2) Short, intermediate and long-term goals based on market trends, economic condition, and current demographic data.
 - 3) Attraction and retention of businesses and private capital investment inside or benefitting the redevelopment area.
 - 4) Public Relations and marketing plan.

Budget and financial including:

- a) Assess all potential revenue sources.
- b) Assist and advise in preparation of annual budget.
- c) Research and identify economic trends that could affect revenue.

Project Evaluation and Management including:

- a) Evaluate impact analyses to determine project risks, costs and benefits.
- b) Evaluate financial aspects of special projects.
- c) Research to determine project impact on public interests including, land-use, condemnation, environmental and other legal impacts

1.2 Description of Additional Services. When authorized in writing by the Client's authorized representative, the Consultant shall perform the following additional services:

- (a) Analyze operations, maintenance and overhead expenses; prepare rate schedules, earnings and expense statements, feasibility studies, appraisals and evaluations, detailed quantity surveys of materials, equipment and labor, and operating or maintenance manuals
- (b) Furnish the services of special consultants.
- (c) Furnish renderings, exhibits, or models of any part or all of any project.
- (d) Serve as an expert witness in any administrative or judicial proceeding.
- (e) Travel to places other than the Client in connection with the performance of supplemental services.
- (f) Provide proposal to create or update the Client's Comprehensive Plan, Thoroughfare Plan, Utility Master Plan, Long-term Control Plan, Bicycle and Pedestrian Masterplan, Main Street Plan, UDO.

SECTION II. THE CLIENT'S RESPONSIBILITY

2.1 The Client shall have the responsibilities set forth below:

- (a) Assist the Consultant by placing at its disposal all available information pertinent to any project upon which it is working, including previous reports and any other data.
- (b) Examine all studies, reports, estimates, specifications, drawings, proposals, and other documents presented by the Consultant, and render in writing decisions pertaining thereto within a reasonable time so as not to delay performance of the services of the Consultant.
- (c) Designate in writing a person to act as Client's representative with respect to work to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define the Client's policies and decisions with respect to the services covered by this Agreement. The parties understand the Consultant shall perform its services under the direct instruction and supervision of the Client representative designated under this paragraph.
- (d) Give prompt written notice to the Consultant whenever the Client observes or otherwise becomes aware of any discrepancies in the Basic Services or Additional Services provided by the Consultant so that the Consultant may investigate and make recommendations to the Client.
- (e) Furnish approvals and permits from all governmental authorities having jurisdiction over any project undertaken hereunder and such approvals and consents from others as may be necessary.
- (f) Provide all legal, accounting, insurance counseling, and similar services that may be required in connection with services performed under this Agreement.
- (g) Bear all costs incident to compliance with the requirements of this Section II.

SECTION III. PERIOD OF SERVICE

The term of this Agreement shall be twelve (12) months from November 15, 2022 through November 14, 2023, unless this contract is terminated pursuant to the terms of section 5.1 below.

After the expiration of said period the parties may negotiate to extend this contract for an additional period of time.

SECTION IV. PAYMENTS TO THE CONSULTANT

4.1 Methods of Payment for Services and Expenses of the Consultant.

- (a) (a) The Client shall pay the Consultant for Basic Services rendered under Section 1.1 of this Agreement the lump sum fee of **three thousand, three hundred thirty-three dollars and thirty-three Cents (\$3,333.33)** plus reasonable expenses for out-of-pocket costs incurred by Consultant related to the services on a monthly basis for each month that this contract is in effect not to exceed **forty thousand dollars and zero cents annually (\$40,000)**. The 'reasonable expenses for out of pocket expenses' referred to herein does not include mileage to attend the meetings included in schedule 1.1 c above.
- (b) All other tasks described in Section 1 of this agreement shall be authorized by the Client in writing prior to the start of the task authorized in accordance with the rate schedule attached to this Agreement. The cost authorized by the Client shall be in addition to the total contract amount stated in Paragraph 4.1(a). Consultant shall furnish Client with an estimate of the anticipated cost of the task prior to the start of the task when requested by Client.

4.2 Times of Payment.

- (a) Consultant shall invoice Client on a monthly basis for all Basic Services and Additional Services performed and shall include supporting documentation as may be requested by Client. Payments are due and payable upon presentation of Consultant's monthly statement. Amounts unpaid forty-five days after the invoice date shall bear interest at the rate of 2.0% per month on the unpaid balance.
- (b) The Consultant may, after giving seven (7) days written notice to the Client of an overdue balance, suspend services under this Agreement until it has been paid in full on such overdue amount.

SECTION V. GENERAL CONSIDERATIONS

5.1 Termination

(a) This Agreement may be terminated by either party by thirty (30) days advance written notice to the other party.

(b) If this Agreement is terminated, the Consultant shall be paid for services rendered to the date of termination, and for reimbursable expenses incurred on or before such date.

5.2 Insurance

5.2.1 Consultant shall procure and maintain insurance for protection claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom.

5.2.2 Also Consultant shall procure and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by a negligent error, omission or act for which the insured is legally liable.

5.2.3 Consultant shall list Client as additional insured under the Consultant's property and liability insurance.

5.3 Successors. This Agreement shall insure to the benefit of, be binding upon, and be enforceable by and against the successors and assigns of the respective parties hereto.

5.4 Counterparts. This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail.

5.5 Construction. The parties acknowledge that each party has reviewed this Agreement and voluntarily entered into this Agreement. This contract shall be construed according to the laws of the State of Indiana.

5.6 Waiver. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

5.7 Severability. Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

5.8 Third Parties. There are no intended third-party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date set forth in the recitals above.

Client:

Consultant:

Town Council President

Dan Cutshaw
ms consultants, inc.