

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this "Agreement") is entered into effective as of Dec 11, 2014, between the Town of Fort Mill, State of South Carolina (the "Client") and LSL PLANNING, INC., a SAFEbuilt company, (the "Consultant").

Preliminary Statements:

- A. The Client desires to engage the Consultant to render professional services for the Client.
- B. The Consultant desires to provide said services and agrees to do so for compensation based upon services rendered and expenses incurred pursuant to the terms and conditions hereinafter set forth.

Agreement:

The parties agree as follows:

SECTION I. SCOPE OF SERVICES.

The Consultant shall perform the specified services under this Agreement in connection with preparation of a Unified Development Ordinance. The services to be performed are described in, attached to, and made a part of this Agreement as Attachment A. The Consultant shall carry out all activities specified in the above-cited scope of services in a workmanlike manner consistent with the terms of this Agreement and will only provide or arrange to provide services that meet applicable professional standards. The Consultant is an independent contractor. Nothing in this Agreement shall be construed to: (i) give either party the power to direct or control the day-to-day activities of the other; (ii) constitute the parties as agents, partners, joint ventures, co-owners, employer, employees or otherwise as participants in a joint or common undertaking; or (iii) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

SECTION II. CHANGES TO SCOPE OF SERVICES.

The client may from time to time during the course of this Agreement, request modifications of this Agreement or changes in the Scope of Services to be performed hereunder, including any increase or decrease in the amount of the Consultant's compensation. Any changes to this Agreement shall be in writing signed by each party.

SECTION III. PROJECT MANAGEMENT AND COMMUNICATION

The Consultant Contact shall be Paul LeBlanc, as Planning Manager. No other direct contact shall be made with the Consultant regarding the project without advance approval of the Consultant Contact.

SECTION IV. COMPENSATION AND METHOD OF PAYMENT.

- A. Except as otherwise provided in this Agreement, the Client shall pay the Consultant a fixed fee of \$74,748, including expenses, for the services described in the Scope of Services (Attachment A), not including any optional tasks.
- B. The Client may authorize the Consultant to provide additional services beyond the Scope of Services or attend additional meetings for a fee in addition to paragraph A. above. For additional professional services the Consultant shall be compensated at the hourly rates described in the Schedule of Hourly Rates (Attachment B), unless a separate fee is mutually agreed upon.
- C. Invoices will be submitted monthly in proportion to the work performed during the billing period and shall be paid within thirty (30) days of receipt of such invoice by the Client. The Client agrees that the

Consultant can, if any payment is not received within thirty (30) days of its due date, stop providing the services or terminate this Agreement as it sees fit. The Client waives any right to claim damages for any loss of profits, business interruption, loss of information or any other direct, indirect, consequential, incidental or punitive damages that arise out of or are in any way related to the Consultant's exercise of its rights under this paragraph C. The Client agrees to reimburse the Consultant for any costs of collection, including reasonable attorney's fees.

SECTION V. ASSIGNABILITY

The Agreement shall not be assigned or transferred by either the Consultant or the Client to any entity not connected with the Consultant without the prior written consent of the other, which will not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the Consultant shall not be prohibited from contracting with qualified subconsultants or from assigning to a bank, trust company, or other financial institutions, any claims for compensation due, or to become due to the Consultant from the Client under this Agreement, without prior written consent. In the event subconsultants are retained by the Contractor, the Contractor shall remain responsible for the satisfactory performance of all work.

SECTION VI. DATA AND SERVICES TO BE PROVIDED BY CLIENT TO CONSULTANT

If requested by the Consultant, Client shall furnish at no charge to the Consultant, in a timely manner:

- A. Copies of all ordinances, reports, plans, maps, drawings, aerial photos, data and similar materials relevant to the performance of the scope of services.
- B. The Client shall be responsible for any professional, legal, engineering or accounting services connected with the project.
- C. The Client shall be responsible for scheduling meeting rooms, publication of agendas and notices, and the costs of publication for postings, notices and mailings.
- D. The Client shall devote sufficient time at regular meetings to adequately discuss the project within the number of meetings herein described and to maintain the project schedule (provided in Attachment A), or shall schedule special meetings devoted exclusively to the project.
- E. The Client shall provide the Consultant with decisions or reviews in a timely manner.
- F. If the primary Client contact person is changed, the Consultant shall be compensated for time spent on orientation to the new staff person, if applicable.

SECTION VII. SCHEDULE.

The Consultant and Client shall agree to complete all work required and described in the Agreement on an expeditious schedule designed to meet the time frame as specified in the proposal, or as mutually extended by the Client and the Consultant.

SECTION VIII. OWNERSHIP OF DATA.

Upon completion or termination of this Agreement, all documents, reports, charts, maps, and graphics shall become the property of the Client, and shall not be furnished to any other party without written permission of the Client. It is understood and agreed that the calculations, final documents, studies, surveys, drawings, maps, reports, and specifications prepared pursuant to this Agreement in machine format or hard copy, are instruments of professional service. They are and shall remain the property of the Client.

The Consultant will retain the original documents and drawings until completion of the project. The Client understands that changes or modifications to the documents or drawings made by the Client after completion of the Project may result in adverse consequences that the Consultant can neither predict nor control.

SECTION IX. CONFIDENTIALITY

Information obtained and reports prepared by the Consultant under this Agreement shall be considered confidential and shall not be made available to any individual or organization by the Consultant without prior approval of the Client.

SECTION X. TERMINATION

This Agreement may be terminated for cause by either the Client or the Consultant upon thirty (30) days written notice, together with appropriate documentation of the reasons therefore. In such case the Consultant shall be compensated by the Client for all work completed prior to termination upon delivery to the Client of products completed and all other amounts owing under this Agreement. Determination of the amount owed shall be based on those tasks satisfactorily completed, products prepared and the percentage of work remaining to be completed.

SECTION XI. NON-DISCRIMINATION:

The Consultant shall, when applicable, comply with the requirements of all Federal, State, and Local laws, ordinances and regulations relating to minimum wages, social security, unemployment compensation insurance, and Worker's Compensation, and shall not discriminate against any employee or applicant for employment because of race, sex, creed, color or national origin.

SECTION XII. COMPLIANCE WITH ALL LAWS.

In the performance of this Agreement, Consultant agrees to comply with all applicable Federal, State, and Local statutes, ordinances, and regulations, and obtain any and all permits applicable to the performance of this Agreement.

SECTION XIII. MISCELLANEOUS.

- A. This is the entire Agreement between the parties. None of the prior discussions or agreements between the parties, whether they were verbal or in writing, will still be effective. This Agreement shall take precedence over any additional or conflicting terms in any Attachment or schedule. In signing, the parties agree that the Agreement has been authorized and is binding and will be in effect until terminated or cancelled, as provided below. Should any provision of this Agreement or any provision that is incorporated at a later time be or become invalid or unenforceable, either wholly or in part, then this shall not affect the validity of the remaining provisions of this Agreement. The same shall apply if this Agreement is found to have a gap concerning the matters to be provided. To replace such invalid or unenforceable provision or to fill such gap, an adequate provision shall be incorporated which, to the extent this is legally feasible, will approximate as closely as possible what the parties hereto had intended or would have intended with a view to the meaning and purpose of this Agreement, if they had considered this particular question at the time of the conclusion of this Agreement or of the later incorporation of a provision.
- B. The Consultant will not be liable to the Client for any delays, failure in performance or damages due to fire, explosion, power failures, pest damage, lightning or power surges, strikes or labor-disputes, water, acts of God, war (declared or undeclared), terrorism, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, unauthorized use of the platform, or other causes beyond the Consultant's control.

PROFESSIONAL SERVICES AGREEMENT

- C. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, excluding those relating to conflict of laws. Any lawsuit or action brought by the parties hereto shall be filed and adjudicated in South Carolina, and the prevailing party shall be entitled to reasonable attorneys' fees, expert witness fees and costs of suit, as well as all such fees associated with enforcing any judgment pursuant hereto. If any part of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining parts, which shall remain in full force and effect.
- D. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any person other than the parties hereto and their respective successors and permitted assigns. The failure of either party to enforce any provision hereof shall not be construed as a waiver of such provision.
- E. All notices given hereunder (i) shall be in writing and shall be sent by personal delivery, overnight courier service, or electronic means (including facsimile and e-mail) with confirmation of transmission by the transmitting equipment to the number or electronic address indicated on the signature page to this Agreement, or by certified or registered mail, return receipt requested, to the address given by the other party on the first page of this Agreement, or as the parties may designate in writing from time to time in accordance with these provisions, which shall not constitute an amendment of this Agreement, and (ii) shall be deemed given when deposited with the U. S. Postal Service or courier service if mailed, when transmitted if by electronic means (including facsimile and e-mail) with confirmation of transmission by the transmitting equipment, or when delivered if by personal delivery.
- F. This Agreement may be executed and delivered in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or by electronic image scan transmission in .pdf shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronic image scan transmission in .pdf shall be deemed to be their original signatures for all purposes.

The Client and Consultant have executed this Agreement as of the date above.

TOWN OF FORT MILL, SOUTH CAROLINA

Dennis P. Pieper

12-11-14

Date

DPieper@FortMillsc.gov

E-mail

803-547-2126

Facsimile Number

LSL PLANNING, A SAFE BUILT COMPANY

Paul M. LeBlanc

10/11/2014

Date

leblanc@lslplanning.com

E-mail

(616) 336-8478

Facsimile Number

ATTACHMENT A SCOPE OF SERVICE

The following work plan will be conducted in accordance with the terms of this Agreement.

I. Organize

It is essential to begin the project with a clear understanding of roles, responsibilities and objectives. This initial step in the process will establish the working relationship between Town and consultant, provide an orientation to the LSL team and define expectations.

Task 1.1 – Start-up Meeting:

LSL team members will meet with the Fort Mill team to accomplish the following:

- Clearly define expectations
- Identify preliminary issues
- Establish clear lines of communication and authority
- Determine regular meeting days/times for project coordination
- Collect all relevant materials (ordinances, plans, forms, meeting minutes, etc.)

Task 1.2 –Tour

Following the initial meeting, LSL team members and Town staff/officials will tour the community to familiarize the team with current conditions, range of land uses, quality of development, and issues previously discussed at the start-up meeting.

II. Understand

To ensure that the project proceeds on solid footing, it is critical that we begin with a good understanding of current conditions and issues to be addressed. This will be achieved through a review of existing documents and targeted input from key stakeholders. As a result, LSL will have a good grasp of the current regulations, as well as the perceptions of those who use those regulations, both from the enforcement side and the user's side.

Task 2.1 – Review Current Regulations and Plans

The LSL team will review the current zoning, subdivision and related land development regulations, the comprehensive plan, application forms, and minutes (past 12 months) of the Planning Commission and Board of Zoning Appeals.

Task 2.2 – Technical Audit

As part of the above review, LSL will prepare a detailed technical audit of the current regulations. This audit will address organization, overlap, inconsistencies, conflicts with South Carolina law and recent court opinions, support for the comprehensive plan and other short-comings to be addressed. These findings will be incorporated into the Blueprint document (Task 3.1).

Task 2.3 – Interviews

Up to eight individual interviews will be conducted with local officials and others identified by the Town who have a familiarity with zoning and development in Fort Mill. The purpose of the interviews will be to identify specific concerns related to the regulations and the review processes. A summary of the interview results will be provided.

Task 2.4 – User Groups

A series of user group discussions will also be organized to provide another opportunity for key stakeholders to be involved early in the process. It is likely that four groups of eight to ten people each will be identified to participate. Possible groups to be represented may include:

- Land developers
- Major employers
- Downtown business owners
- Neighborhood associations
- Large land owners
- Local engineers and surveyors

The LSL team will lead the user group discussions. Attendance by staff and other officials would be welcomed to observe the discussion. A summary of findings will be provided.

III. Articulate

Translating the wealth of information obtained earlier into a workable, readable, usable, predictable set of regulations is the challenge of this series of tasks.

Task 3.1 –Blueprint

Our proposed process emphasizes an “up front” effort to develop a blueprint for the future UDO before we begin drafting new language. This blueprint is intended to serve as a guide and reminder of where attention is to be focused, and to build consensus on changes so there are no surprises at the end of the process. The blueprint will address the following:

- Potential new format and organization
- Technical audit of the current ordinance
- Style guide, to determine document standards such as fonts, capitalization, use of comma vs. semi-colons, etc.
- Style of graphics, tables and illustrations to be used
- Agreement, chapter-by-chapter, on the extent of changes to be made
- Agreement on how changes and policy issues will be illustrated or identified throughout the process, especially at the public hearing
- Outline concepts for new regulations identified through previous staff discussions, review of supportive plan goals and recommendations, such as:
 - Defining the intent and purpose of each district. It may be discovered that some districts are not needed or should be altered to make them more useful. Other district designations or some other techniques could be used in lieu of such districts to accomplish desired ends.
 - Relating to the comprehensive plan’s nodal approach that applies community-wide, yet is sensitive to and responds to the character of individual districts. These may range from the downtown business district or arterial corridors, where a Form-Based approach makes sense, to more traditional residential areas where an enhanced traditional (Euclidean) approach is preferred.
 - Reviewing the application of PUD districts that contain clear objectives, qualifying conditions, review standards, and added incentives to encourage their use and to ensure that resulting development is distinctive and consistent with comprehensive plan objectives.

- Reviewing the ordinance’s current review provisions and standards and determining if they should be strengthened to support comprehensive plan goals and recommendations.
- Introducing standards and requirements in the ordinances that support sustainability.
- Reviewing current sign regulations and determining if they are generally compatible with comprehensive plan objectives.
- Reviewing current landscaping requirements and establishing a consistent baseline for future landscape improvements.
- Reviewing zoning regulations and determining if they effectively manage vehicular access.
- Defining natural features setbacks or overlays and other environmental regulations.

One of the objectives is to improve the overall “usability” of the ordinance. During our initial staff meeting (with those who regularly use the ordinance) we will solicit input regarding the perceived “user-friendliness” of the document, including a presentation of various organizational options. There are many possible techniques that can be used to help a reader maneuver through and understand an ordinance. The Fort Mill ordinances will be enhanced through improved organization, document layout and extensive use of graphics and tables. See the Bluffton UDO, referenced earlier, as an example.

Task 3.2 –Review

The Blueprint will be reviewed with Town staff and the Planning Commission (or steering committee) to achieve consensus regarding the issues, objectives and priorities. One result of this meeting will be agreement on the sequence of output for individual sections/chapters.

Task 3.3 – Town Council/Planning Commission Meeting

A presentation will be made to the Council and Planning Commission) to describe the findings of the technical review, discuss the Town’s regulatory philosophy and summarize the input received to date.

Task 3.4 – Working Draft

LSL will begin drafting the new UDO, based on direction received from the prior task. The purpose of this draft will be to provide modified text and a reorganized document for internal staff and committee (steering committee or Planning Commission) review and comment. This initial draft will consist of text but will not include graphics or final formatting in anticipation of substantive revisions. A revised zoning map, if needed, will also be part of this task.

Task 3.5 –Review

The document or priority sections will be provided for review and comment. An agreed upon protocol will be established to ensure that comments and edits are provided to the consultant team from a single client source. The review comments submitted to the consulting team should represent a consensus of the review team. A series of four review meetings will be held between the review committee and LSL team to discuss revisions, possible options and other considerations to be incorporated into the formal draft.

Task 3.6 – Formal Draft

A second draft ordinance will be prepared, incorporating agreed-upon changes from the prior review of the working draft. This “formal” draft will be formatted and contain all graphics and illustrations that will be part of the final document. The purpose of this draft is to elicit input from stakeholders and the general public.

Task 3.7 – Public Forum

Input regarding the formal draft UDO and zoning map will be actively solicited. While a specific plan will be worked out in conjunction with the Town, it is likely that several of the following activities would be part of that effort:

- **Web site:** the draft code would be posted on the Town’s web site or a special project site to afford broad public access to the document (LSL subscribes to Mind-Mixer which could be employed throughout this process).
- **Social web sites:** In order to reach a diverse representation of citizens, our team may utilize the internet to help inform, excite and involve residents. Town staff, with our input, could establish a Facebook and/or Twitter account dedicated to the project. These pages could be used to spread the word, particularly to those that don’t often participate in traditional workshops.
- **User Groups:** the user groups brought together at the outset of the project could be reconvened for the purpose of reviewing and commenting on the formal draft. This would serve as a reality check to determine if and to what extent the concerns expressed at the outset of the project have been addressed.
- **Public forum:** a public open house could be conducted to present the ordinance, describe significant changes and obtain comments from the public.

Task 3.8 – Planning Commission Presentation

The consultant team will present the draft code to the Planning Commission (or a joint Council/Planning Commission meeting), review the process and summarize the public and stakeholder input. LSL will prepare a summary of public input obtained from the various efforts in Task 3.7 and present the results. The input will be discussed and decisions made on revisions to be made to the formal draft.

Task 3.9 – Final Draft

Following the decisions regarding changes to the formal draft, LSL will prepare a “final draft” (including map) to be submitted for public hearing and adoption.

IV. Adopt

This final stage of the process involves the formal review, refinement and approval of the UDO.

Task 4.1 – Public Hearing

LSL team members will attend the public hearing to present the proposed ordinance and respond to questions and comments, as appropriate. Town staff will be responsible for posting all required public notices for the hearing.

Task 4.2 – Review

Following the hearing, the Planning Commission and staff will discuss comments received from the public hearing process and decide upon any refinements to be made. A list of reasonable changes and/or a marked up version of the draft will be provided to LSL.

Task 4.3 – Planning and Zoning Commission Recommendation

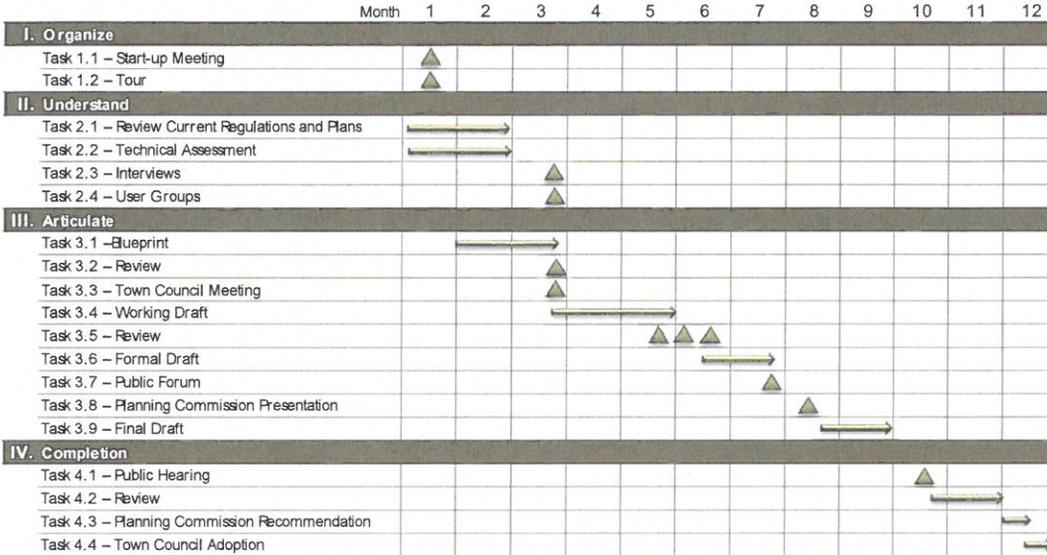
An addendum of changes, supplementing the final draft, will be provided to the Planning Commission to be recommended and forwarded to the Town Council for final approval.

Task 4.4 –Council Adoption

The final ordinance and the addendum of changes will be submitted to the Council for adoption. Following adoption, LSL will prepare the full UDO, as adopted. Both digital and hard-copy versions, including all graphics, will be provided.

Schedule

The UDO will be completed within a period of 12 months from the date of receiving authorization to proceed.



Optional Services

In addition to the preparation of the UDO, as described above, related services can be provided. Among the optional services available are the following:

1. *Revise Application Forms:* LSL would review all current application forms for content, format and readability. The intent of the task would be to refine the forms to ensure they are requiring all essential information but not asking for extraneous information that is not needed. It may also be possible to consolidate applications into a single form. Fees for this service can be determined with the Town after determining the number of separate application forms are currently being used.
2. *Create User Manual:* This task would result in the creation of a user-friendly guide to the land development review and approval process. It would contain a simplified “how-to” instruction for using the UDO; identify review procedures for various required actions (zoning change, site plan review, special use approval, variances, etc.) in a table or flow chart format; provide answers to frequently asked questions; and incorporate the various zoning and land development application forms and related instructions. Professional fees for this optional task would be charged as a lump sum of \$4,500.
3. *Training:* While the proposed process of preparing and reviewing the UDO is intended to involve and educate Town staff and decision-makers with regard to the ordinance content and the rationale for including various provisions, it would be particularly beneficial to provide training to the Planning Commission once the UDO is adopted. This could also be a joint session with the Council, Board of Zoning Appeals and Planning Commission. In addition to highlighting key provisions in the UDO, such a session would address the decision-making process, role of the

Planning Commission (and others), using standards, conducting public hearings, minimizing risk of litigation and procedures for effective meetings. The professional fees for such a session would be billed as a lump sum, plus travel expenses, of \$1,800.

4. *iZone™Format*: In order to make the UDO highly interactive and user-friendly, the final document could be formatted using LSL's iZone™ format. This method of code creation uses Adobe graphic software that results in a more user-friendly interface. iZone™ takes interactivity to a whole new level, with an interactive web-ready PDF that allows users to easily navigate between sections, definitions, tables, and the zoning map. It incorporates hyperlinking as described above, but to a greater extent and with more graphic appeal, similar to a website. With this option, the final UDO would be prepared with Adobe's InDesign software. We invite you to view the Bluffton UDO as an excellent example of this format (<http://www.townofbluffton.sc.gov/Documents/izone.pdf>). The fee for this option would be a lump sum of \$3,800.

**ATTACHMENT B
2015 HOURLY RATES**

In addition to the optional services described in Attachment A, other services, such as attendance at extra meetings or preparation of additional drafts, may be requested by the Town. These services would be billed on an hourly basis in accordance with the following fee schedule unless a fixed fee was otherwise negotiated with the Client.

<u>Professional</u>	<u>Hourly Rates</u>
Manager	\$175.00
Principal Planner	\$125.00
Senior Planner	\$115.00
Project Planner II	\$100.00
Project Planner I	\$92.00
Assistant Planner	\$80.00
Word Processor/Desktop Publisher	\$45.00

The hourly rates above include costs of salary with a multiplier for overhead such as office space, administrative staff, equipment, training, insurance, and benefits. Travel time to meetings and time at meetings is billed on an hourly basis. Hourly rates are subject to change at the beginning of each calendar year.

Hourly rates do not include reimbursable expenses such as: mileage, long-distance phone calls, copying, document reproduction, postage or overnight mail, photography, map reproduction and materials, aerial photographs, purchase of computer mapping files, meals and lodging. These expenses are invoiced at documented cost.

Professional Classification*

Bradley K. Strader, AICP, PTP, Planning Manager
Paul M. LeBlanc, AICP, Planning Manager
Fredalyn Frasier, Principal Planner
Brian Borden, AICP, Senior Planner
David Jirousek, AICP, Senior Planner
Sherrin Hood, AICP, Senior Planner

Caitlin Malloy-Marcon, Senior Planner
TJ Dlublac, AICP, Project Planner II
Carol Maise, Project Planner II
Kathleen Duffy, AICP Project Planner I
Brad Brey, Assistant Planner
Max Dillivan, Assistant Planner

* Subject to Change