



City Council Agenda Form

Meeting Date: 2/22/2021
Department: Executive
Public Hearing: Yes No

For Clerk's Use Only
AGENDA ITEM #

	X	
<i>Consent Agenda</i>	<i>Regular Agenda</i>	<i>Closed Session</i>

Presenter: Councilman Kevin Crystal

Request Type: Informational Discussion Action Item

Does this item require legal review? Yes No **City Attorney E-Mail attached?** Yes No

Time Required for Request: Minutes 5

Agenda Item Title:

Review of Professional Planning Services Contract with The Planning Collaborative (TPC)

Attachment(s):

Brief Summary:

Action Requested:

Issue Overview:

Background Information & Issue Summary:

Financial Impacts:
None

Staff Recommendations/Comments:

**MASTER SERVICES AGREEMENT
BETWEEN
CITY OF DEFUNIAK SPRINGS AND THE PLANNING COLLABORATIVE
RELATING TO
PROFESSIONAL PLANNING SERVICES**

THIS AGREEMENT is made and entered into this 14th day of September, 2020, by and between the **CITY OF DEFUNIAK SPRINGS, FLORIDA**, a municipal corporation (City) and the **planning collaborative** (TPC).

PREMISES

WHEREAS, the City desires to have TPC and TPC’s contracted sub consultants assist the City with various professional planning and related services, and other services as needed.

WHEREAS, the City desires to employ TPC and TPC’s sub consultants for those purposes upon the terms and conditions in this Agreement, and TPC is desirous of obtaining such employment and has represented that it is qualified and competent to perform such services upon said terms and conditions;

NOW, THEREFORE, in consideration of the following covenants, it is agreed:

1. SCOPE OF PROFESSIONAL SERVICES:

- A. The City retains TPC to diligently, competently and timely perform the "Professional Planning Services" on an as-needed basis, which consist of the services specified by or similar to the City of DeFuniak Springs Request for Proposals (RFP# 20-01-CD), attached and incorporated herein. Upon request, TPC will prepare a project specific scope of work for each task and phase of work to be undertaken in accordance with the general scope of services described in this agreement and in the request for statements of qualification which led to this Agreement. The proposed scope of work shall include a schedule for the work and, separately stated, a proposed fee. The proposed fee shall be (i) a stipulated sum or (ii) a stipulated sum plus one or more specified allowances which may be authorized by the City Manager or his designee or (iii) a fee determined on a time-involved basis at the hourly rates specified on **Exhibit A** which shall include a maximum cost, otherwise known as a "not to exceed" amount.
- B. If accepted by the City, the proposed scope of work shall be incorporated into a task order in materially the form set forth as **Exhibit B**. Each Task Order shall be numbered and dated, incorporate this Agreement and any additional terms related to that specific Task Order, and shall be signed both by the City and by TPC. If a term herein conflicts with a term in a Task Order, the term in the Task Order shall control to the extent of such conflict.

2. COMPENSATION AND PAYMENT:

- A. TPC's compensation for the services described in each scope of work shall be stated or incorporated in the Task Order related to that scope. Hourly compensation shall be determined in increments of one-half (1/2) of an hour.
- B. In addition, with prior, written authorization by City, TPC shall be reimbursed for reasonable out-of-pocket travel expenses, which must be consistent with Florida Statute 112.061, upon submission of adequate documentation. Records of costs incurred under the terms of this Agreement shall be maintained by TPC and made available to the City during the period of this Agreement, and for one (1) year after the final payment is made. Copies of these documents and records shall be furnished to the City upon request and at cost.
- C. Upon written instruction by the City, TPC shall perform all work necessary or convenient to complete the services for which a Task Order is entered, and which are mentioned or referenced in this Agreement. TPC may be entitled to additional compensation unless such work is required as a result of error, omission, or negligence by TPC. The additional compensation shall be computed by TPC on a revised fee quotation proposal and submitted to the City for written approval. If the parties cannot agree on the fee for the additional compensation, TPC's initial compensation will be such amount as the City shall determine in good faith to be the fair value of such services, and such amounts shall be paid to TPC in monthly installments as set forth elsewhere in this Agreement.

No additional work shall be performed until both parties hereto have agreed to the compensation due for said work, and the additional work and compensation for said work reduced to writing.

- D. In the event that additional outside services from a firm other than those identified in the Proposal submitted by TPC on August 10, 2020 are required due to unforeseen conditions, the TPC shall:
 - 1. Obtain a written proposal from the firm designated to render the required services, and submit such proposal to the City for written approval.
 - 2. If the services are such that registration is required to perform them, TPC shall select a firm that is registered in the State of Florida, if possible.
 - 3. If the proposal is approved in writing by the City, TPC shall enter into a contract with the firm for the furnishing of such services in accordance with the proposal.
 - 4. TPC shall submit all documents related to the proposal for outside services to the City digitally. If the City specifically requests hard copies of a document, the costs incurred shall be billed at a cost plus fifteen (15) percent.
 - 5. Services rendered by TPC in connection with the coordination of these additional services shall be considered within the scope of the specific Task

Order, and no additional fee shall be due TPC except as part of the multiplier stated in immediately preceding subsection 2.D.5.

- E. At the end of each month during which a Task Order shall be outstanding, TPC shall submit a separate invoice for services rendered during that month with respect to each Task Order, as follows:
 - 1. Where a stipulated sum is specified, the City shall pay TPC in monthly installments based upon the percentage of satisfactory completion. In support of payment, TPC shall monthly submit a request for payment describing the work done, percentage of completion and amount requested to be paid, all by reference to line items in the scope of services where available.
 - 2. Where fees are computed on a time-involved basis, the City shall pay TPC monthly in arrears upon receipt of an itemized statement in form and detail reasonably acceptable to City.
- F. Documents shall be submitted to the City digitally. Any documents requested by the City in hard copy form shall be produced at a cost plus fifteen (15) percent. Such costs shall be identified and agreed upon in each respective Task Order.
- G. All other costs such as postage, photocopying, and other incidental expenses shall be submitted at a cost plus fifteen (15) percent. Such costs shall be identified and agreed upon in each respective Task Order.
- H. The City shall make payment to TPC within thirty (30) days of submission of each invoice. All invoices shall be submitted digitally to the designated City representative.

3 SCHEDULE:

- A. The estimated schedule for the services required shall be included in each Task Order and related scope of work.

4 CITY'S RESPONSIBILITY:

- A. The City shall furnish TPC with all existing data, plans, profiles, and other information available and useful in connection with the proposed project now on file with the City which shall be returned to the City upon the completion of the services to be performed by TPC, unless such data, plans, profiles, and other data are necessary for daily operations; then such forms of information shall be promptly duplicated by TPC and the originals returned to the City.

5 CITY'S DESIGNATED REPRESENTATIVE:

- A. It is understood and agreed that the City designates the City Manager or their designated representative to represent the City in all technical matters pertaining to

and arising from the work and performance of this Agreement, whose responsibility shall include:

1. Examination of all reports, sketches, drawings, cost estimates, proposals and other documents presented by TPC, and rendering in writing decisions pertaining thereto within a reasonable time so as not to materially delay the work of TPC.
 2. Transmission of instructions, receipt of information, interpretation, and definition of City policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
 3. Give prompt written notice to TPC whenever the City observes or otherwise becomes aware of any defects or changes necessary in the Project or Task.
6. **CHANGES IN SCOPE:** The City may, from time to time, request changes in the assigned Task Order and scope of work. Such changes, including any increase or decrease in the amount of TPC's compensation, shall not be binding unless mutually agreed upon by and between the City and TPC, and incorporated in written amendments to this Agreement.
7. **TERMINATION:** Either party may terminate this agreement for any or no reason upon thirty (30) days written notice to the other party.
8. **TERM:** Subject to the availability of appropriated funds, this Agreement shall take effect on the day and year first above written. The term shall be for a period of one (1) year from that date, and shall be renewable upon mutual agreement of the parties for up to two (2) additional one (1) year terms.
9. **INDEMNIFICATION:** TPC hereby does hold the City harmless of any and all claims, actions, or suits to the extent caused by the negligence, recklessness or intentionally wrongful conduct of TPC or any person employed or utilized by TPC in the performance of professional services hereunder, to the fullest extent permitted by Section 725.08, *Florida Statutes*. The specific consideration given for the promises of TPC set forth in this paragraph is one dollar (\$1) in hand paid by the City to TPC, receipt whereof is hereby acknowledged and the adequacy of which TPC accepts as completely fulfilling the obligations of the City. The provisions of this Section shall survive termination of this Agreement.
10. **INSURANCE:**
- A. TPC shall procure and maintain during the life of this Agreement insurance of the following types:

1. **General Liability:** Comprehensive General Liability insurance. The minimum primary limits shall be no less than \$1,000,000 per occurrence / \$2,000,000 general annual aggregate. This shall include Personal and Advanced Injury Liability of no less than 500,000. The City shall be named as additional insured pursuant to a Certificate of Liability Insurance providing comprehensive general liability coverage for completed operations in addition to on-going operations.
 2. **Professional Liability:** Project specific Professional Liability insurance covering professional services rendered in accordance with this Agreement in an amount not less than \$1,000,000 per occurrence / \$2,000,000 annual aggregate.
- B. **Certificates of Insurance:** TPC shall furnish to the City copies of all policies and certificates of insurance allowing thirty (30) days written notice of any change in limits or scope of coverage, cancellation, or non-renewal. If the insurance policies expire during the term of this Agreement, a renewal certificate shall be filed with the City within thirty (30) days prior to the renewal date.
11. **NEGOTIATION DATA:** TPC hereby certifies, covenants, and warrants that the Hourly Rates and other factual unit costs supporting the compensation provided in Exhibit A are accurate, complete, and current as of the date of negotiation.
12. **OWNERSHIP OF DOCUMENTS:**
- A. It is understood and agreed that all documents, including detailed reports, plans, original tracings, specifications, and all other data in whatever form (text, graphic, digital or other electronic), prepared or obtained by TPC or any sub consultant in connection with its services hereunder shall always be the property of the City and shall be delivered to the City promptly without cost or lien upon request or termination of this Agreement by lapse of time or otherwise. TPC shall not be liable for any use by the City of project specific design documentation if modified in any manner without written approval of TPC. The City shall not use TPC's project specific design documentation on any project other than the project described in the Scope of Work and Instructions to Respondents unless the City notifies TPC of its intended use, provides insurance protection to TPC for all claims which might arise out of the City's use of the documents, and obtains written consent of the use by TPC.
 - B. When transferring data in electronic media format, TPC makes no representation as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by TPC at the beginning of the Project. Because the data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be

corrected by the party delivering the electronic files. TPC shall not be responsible to maintain documents stored in electronic media format after acceptance by City.

Notwithstanding any provision to the contrary contained in this Agreement, TPC shall retain sole ownership to its pre-existing computer programs and software.

13. WORK COMMENCEMENT/PROGRESS/DELAYS:

- A. The services to be rendered by TPC shall be available upon execution of this Agreement, and commence upon the signed respective Task Order, and upon written notice to proceed from the City Manager or their designee.
- B. TPC agrees to abide by the schedule for performance of the contracted services. The City will be entitled at all times to be advised in writing at its request as to the status of the work being done by TPC, and of the details thereof. City may require specification of liquidated delay damages in a Task Order. Failure to specify liquidated delay damages in a Task Order shall not relieve TPC of liability for delays or other damages as provided by law.
- C. In the event there are delays on the part of the City or regulatory agencies as to the approval of any of the plans, permits and drafts of special provisions submitted by the TPC which delay the project schedule completion date, the City shall grant to the TPC in writing an extension of time equal to such delays.
- D. TPC shall maintain an adequate and competent staff of professionals and may associate with other qualified firms for the purpose of rendering services hereunder. TPC, however, shall not sublet, assign, or transfer any work under this Agreement without the written consent of the City.

14. STANDARDS OF CONDUCT:

- A. TPC warrants that the company has not employed or retained any company or person, other than a bona fide employee or sub consultant working for or with TPC to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee or sub consultant working for or with TPC any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- B. TPC asserts that it nor any of its employees presently has any interest and shall not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any manner or degree with performance of services hereunder.
- C. TPC agrees that it and its employees shall be bound by the Standards of Conduct provided in Section 112.313, Florida Statutes, as it relates to work performed under this Agreement, which standards will by reference be made a part of this Agreement as though set forth in full. TPC agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

15. **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS:** TPC shall comply with all Federal, State, and Local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, gender, sexual orientation, or national origin in the performance of work under this Agreement.
16. **ASSIGNABILITY:** TPC shall not assign any interest in this Agreement, and shall not transfer any interest in the same, whether by assignment or novation, without the prior written approval of the City, provided that claims for the money due or to become due TPC from the City under this Agreement may be assigned to a bank, trust company, or other financial institution, or to a trustee in bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.
17. **INDEPENDENT CONTRACTOR:** TPC and all sub consultants are and shall remain an independent contractor and not an employee of the City.
18. **CONTROLLING LAW AND VENUE:** All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of Florida applicable to contracts made and to be performed within this state. Exclusive jurisdiction and venue to interpret or resolve any dispute under this Agreement shall lie in the Circuit Court, First Judicial Circuit, in and for Walton County, Florida.
19. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties with respect to the subject matters. All prior agreements, representations, statements, negotiations, and undertakings are hereby superseded. Any alterations or variations of the terms of this Agreement shall not be valid unless made in writing and signed by the parties. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be illegal or unenforceable, then, notwithstanding, the remainder of the Agreement shall remain in full force and effect.
20. **ATTORNEY'S FEES:** If the either party is required to institute or defend any legal proceedings in connection with this Agreement, the prevailing party shall be entitled to its costs thereof, together with reasonable attorney's fees.
21. **NO WAIVER:** No waiver of any provision of this Agreement shall be effective unless made in writing, signed by the party against whom it is charged. No waiver of any provision of this Agreement shall constitute a waiver of any other provision of this Agreement, nor of the same provision in the future. Neither the failure nor any delay by any party in exercising any right or power under this Agreement, nor any course of dealing between or among the parties, will operate as a waiver of such right or power, and no single or partial exercise of any such right or power will preclude any other or further exercise of such right or power or the exercise of any other right or power.

22. **COOPERATION:** TPC acknowledges that the process of planning and addressing the needs of the community, and coordinating those efforts with other disciplines is a multi-disciplinary effort which will require cooperation and collaboration with numerous consultants, engineers, and counsel assisting and advising the City, as well as direction from the City Manager, and agrees in all things to cooperate with the City and all its consultants as needed.
23. **MEDIATION:** City and TPC agree to attempt to resolve any dispute between them related to the interpretation or performance of this Agreement by mediation in Walton County, Florida, with a mutually acceptable, certified Florida Mediator to serve at joint expense. Mediation contemplated by this paragraph is intended to be an informal and non-adversarial process with the objective of helping the parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the parties. The mediator shall assist the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives. Any settlement will require approval of City's governing board. If the parties are unable to reach a mediated settlement within ninety (90) days of the mediator's appointment, either party may terminate the settlement discussions by written notice to the other and initiate litigation. Any litigation commenced in violation of this section shall be stayed pending mediation as agreed. This section shall survive termination of this Agreement.
24. **PUBLIC RECORDS:** The City is a public agency subject to the Florida Public Records Law expressed in Chapter 119, Florida Statutes. Certain services under this Agreement may qualify TPC as a "Contractor" as defined by Florida Statute 119.0701. Accordingly, TPC agrees to also comply with that law, specifically including to:
- A. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
 - B. Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
 - C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
 - D. Meet all requirements for retaining public records and transfer, at no cost, to the City, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

The requirements of this section are intended to be consistent with the then current statutory requirements and may be reduced or expanded depending on acts of the Florida Legislature.

IN WITNESS WHEREOF, the parties have hereto caused the execution of this Agreement as of the year and date first above written.

Signed, Sealed, and Delivered in the presence of:

Cynthia Smith Permenter
(First Witness Signature)

Cynthia S. Permenter
(First Witness Printed Name)

Maryanne Schrader
(Second Witness)

Maryanne Schrader
(Second Witness Printed Name)

THE CITY OF DEFUNIAK SPRINGS, FLORIDA
a municipal corporation

By: Bob Campbell
Bob Campbell, Mayor

Date: 9-18-2020

THE PLANNING COLLABORATIVE, LLC, a Florida limited liability company authorized to transact business in Florida

By: Allara Mills-Gutcher
Allara Mills-Gutcher, AICP
Managing Member

Date: Sept 17, 2020

EXHIBIT A

Hourly Rate Schedule

STANDARD BILLING RATES
September, 2020

CLASSIFICATION	HOURLY RATE
MANAGING PRINCIPAL	\$160.00
SENIOR PLANNER	\$160.00
DESIGNER	\$135.00
PLANNER	\$125.00
PLANNING ANALYLIST	\$100.00
TECH SUPPORT	\$90.00
ADMINISTRATIVE SUPPORT	\$70.00

COMBINED TASK ORDER AND NOTICE TO PROCEED

TASK ORDER NO.: 1

DATE: September 10, 2020

Reference is made to that certain MASTER SERVICES AGREEMENT BETWEEN CITY OF DEFUNIAK SPRINGS AND the planning collaborative RELATING TO PROFESSIONAL PLANNING SERVICES dated September 10, 2020, (the Agreement), the terms, conditions and definitions of which are incorporated herein as if set forth in full. Neither party is in breach of the Agreement.

Pursuant to the Agreement, TPC agrees to perform the specific tasks set forth upon incorporated Attachment A, Scope of Services, relating to

TPC's total compensation shall be (check one):

- a stipulated sum of \$ _____ or
- a stipulated sum of (amount noted below) _____ plus one or more specified allowances listed below which may be authorized in writing by the City Manager or their designee,
 - Allowance of \$560 for the JLUS determination memo, and/or
 - Allowance of _____ for _____; or a fee determined on a time-involved basis with a maximum cost of \$17,000 for the adoption of the Comprehensive Plan (schedule attached) as set forth upon incorporated Attachment B, Fee Breakdown, and shall be paid in monthly installments as specified in the Agreement.

Work shall begin on September 15, 2020, and shall be ongoing until termination of this Agreement. The date of completion of all work is therefore March 30, 2020. There are no additional rights and obligations related to this Task Order other than as specified in the Agreement.

Upon execution of this task order by both TPC and City, TPC is directed to proceed.

IN WITNESS WHEREOF the parties have caused these presents to be executed in their names on the date shown.


the planning collaborative

By: 
Allara Mills Gutcher, Principal

Date: 10/7/2020

ATTEST:

City of DeFuniak Springs, FL

By: 
Mell Smigielski, City Manager

Date: 10-7-20

Project Schedule - Update to the Comprehensive Plan

Task	Responsible Party		Due Date
	City Staff	TPC	
1. Kickoff meeting with City staff	X	X	September 15, 2020
2. Review of Plan for requirements of FL Statutes		X	November 1, 2020
3. Prepare a Survey for distribution to the Planning Board and City Council		X	October 5, 2020
a. City staff will provide comment	X		October 8, 2020
b. TPC will amend as directed		X	October 12, 2020
c. Distribute to the Planning Board and City Council		X	October 13, 2020
d. Receive responses		X	October 20, 2020
e. Responses to City		X	October 26, 2020
4. TPC will present the revised Draft Plan to staff for comments		X	November 25, 2020
a. City staff will comment on the draft	X		December 4, 2020
b. TPC will amend as directed		X	December 7, 2020
c. Package Draft Plan for distribution to Planning Board for hearing	X		as scheduled by DFS
5. Present the revised Draft Plan to the Planning Board (one hearing)		X	January 4, 2021
a. TPC will make amendments, as directed, as a result of PB input		X	January 7, 2021
b. Submit PB version of the Draft Plan to City staff.		X	January 8, 2021
6. Present the Draft Plan to the City Council for transmittal to DEO (one hearing)		X	January 25, 2021
a. If City Council elects to amend the revised Draft Plan, TPC will update accordingly		X	January 28, 2021
b. City staff will transmit the Draft Plan to all reviewing state agencies	X		w/in 10 days of hearing
c. City staff will receive comments from state agencies	X		TBD
d. If any objections are made to the transmitted Plan, TPC will amend accordingly		X	TBD
e. City staff will present the final Draft Plan to City Council for adoption by ordinance	X		TBD



the planning collaborative

Revised October 2, 2020