



LEVINE PLANNING STRATEGIES

Tools for Building Communities

Levine Planning Strategies, LLC
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AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement made and entered into this ___ day of January, 2020, by and between the City of Hallowell, Maine, a municipal corporation (the City) and Levine Planning Strategies, LLC (Consultant).

RECITALS

1. The City desires to have certain professional consulting work done involving the update of the City of Hallowell's Comprehensive Plan; and
2. The City desires to enter into an agreement for this work as indicated in the Request for Qualifications, hereinafter referred to as "RFQ," and made a part of this Agreement, included herein by specific reference, and attached as Appendix A to this Agreement;
3. The Consultant desires to provide services requested in the RFQ to the City of Hallowell based on the formal proposal submitted in response to the City's RFQ, said proposal made a part of this Agreement, included herein by specific reference and attached as Appendix B to this Agreement;
4. The Consultant and City agree to a general scope of work as outlined in Appendix C of this Agreement;
5. The City has \$28,000 encumbered to undertake work items in Section I outlined in Appendix C, and agrees to seek but has not yet obtained an additional \$37,000 to complete the work items in Sections II and III in Appendix C; and
6. The Consultant possess the skill and competency as well as the financial ability to complete the Project in a manner consistent with the professional skill and care ordinarily provided by other professionals practicing in the same or similar locality under the same or similar circumstances;

THEREFORE, the parties agree as follows:

Article 1 – Consultant Services

1.1 Consultant shall furnish or perform the scope of work described in this Article and Appendix C (the "Services"), unless the City and Consultant agree otherwise in writing. Appendix C constitutes the full work plan and schedule for compensation, broken into currently-funded portions and portions subject to additional funding. Consultant shall deliver at least Section I of the scope of work as part of the currently funded project. The City Manager, as Project Manager, will determine when tasks that are



part of this contract have been completed. Consultant shall not be obligated to complete work items in Sections II and III of Appendix C and the City shall not be obligated to pay for such work items until the City provides Consultant with written notice that funding for such work has been approved.

1.2 Consultant will undertake the Services in a manner consistent with the professional skill and care ordinarily provided by other professionals practicing in the same or similar locality under the same or similar circumstances.

1.3 Consultant shall furnish personnel, services, equipment, materials, and supplies to perform the Services pursuant to this Agreement.

1.4 The final product produced by the work of the Consultant pursuant to this Agreement, including any report, maps, drawings and other documents prepared by the Consultant and intended to be appended to the final product or to be included by reference, shall be owned by the City and Consultant jointly.

1.5 Consultant shall at all times retain insurance in the amount of \$1,000,000 in Professional Liability and Errors and Omission in the amount of \$1,000,000 per claim/annual aggregate. Consultant shall provide the City with certificates of insurance listing the City as additional insured on all appropriate policies prior to performing the Services.

Article 2 – Contract Documents

This Agreement incorporates the documents listed below; those documents are a part of this Agreement and shall be attached hereto. In the event of conflict between these documents and this Agreement, this Agreement shall control. In the event of conflict among the Appendices, they shall be interpreted in the following order of precedence.

Appendix C- Scope of Work

Appendix B – Consultant Response to RFQ

Appendix A – City Request for Qualifications (RFQ)

Article 3 – Consultant’s Key Staff

NAME	POSITION
Jeff Levine	Principal, LPS LLC
Ezra Glenn	Principal, PPRI

Consultant may bring on staffing in the form of research assistants, technical experts, or other subconsultants who will work under the direct supervision of one of these named individuals.



Article 4- Performance Schedule

4.1 Unless otherwise agreed by the City in writing, Consultant shall start and complete the Services in conjunction with **Appendix C**; unless the schedule is revised at intervals as required by the conditions of the project. Consultant shall provide for expeditious and practicable execution of Services.

4.2 Consultant shall complete the Services within the time period mutually agreed upon by both parties, as set forth in **Appendix C**.

4.3 This Agreement is made in anticipation of conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended by mutual agreement as necessary for delays or suspensions due to circumstances that the Consultant does not control. The Consultant will make efforts to avoid any delays or suspensions that may cost the City additional fees for service. Notwithstanding any other provision of this Agreement, the Consultant shall not have liability for or be deemed in breach because of delays caused by any factor outside of its reasonable control, including but not limited to natural disasters, adverse weather, or acts of the City, third parties, or governmental agencies.

4.4. City shall provide reasonable access to all City personnel, facilities and information necessary to properly conduct and complete the Services required under this Agreement.

Article 5 – Invoicing & Payment

5.1 The City shall compensate the Consultant as outlined in Appendix C. The City shall make final payment to the Consultant within thirty (30) days after final bill is received.

5.2 All invoices shall be sent to **Nate Rudy, City Manager, City of Hallowell, Hallowell City Hall, 1 Winthrop St., Hallowell, ME 04347** as well as by email to **citymanager@hallowellmaine.org**. Invoice shall detail the nature and amount of each item billed. Payments shall be sent to **Levine Planning Strategies, LLC, P.O. Box 7215, Portland, ME 04112-7215**

5.3 Any invoice unpaid after sixty (60) days of submission to the City shall bear interest at the rate of 1% compounded monthly.

Article 6 – Limitation of Liability

Notwithstanding anything in this Agreement to the contrary, the cumulative liability of the Consultant to the City for all damages and claims arising out of or related to this Agreement, shall not exceed the fees actually paid to Consultant by the City under this Agreement and the extent of Consultant's available insurance.

Article 7 – Indemnification

Reserved



Article 8 – Changes/Additional Services

8.1 The City may by written notice to Consultant, issue additional instructions, require additional services or omit services covered by this Agreement, provided that any additional services are within the general scope of this Agreement. In such event, there will be an equitable adjustment in price and time of performance. No services provided by Consultant in conjunction with this Agreement shall be interpreted to be additional services for which additional services fees are due unless such interpretation has been agreed to in writing by the City before any additional services are performed or additional fees incurred.

8.2 Consultant shall give the City written notice within five (5) business days after any event which may give rise to a change in the Appendix C. Notice shall include a written statement and detail estimate supporting Consultant's change. The City shall not be bound to any such adjustments in this Agreement unless it expressly agrees to the adjustment in writing. Consultant waives the right to seek any relief if the request is not made within the required time period.

8.3 If additional funding is obtained by the City and the additional Services described in Appendix C are requested, Appendix C shall be amended in writing to reflect the changed scope of work.

Article 9 – Disputes

9.1 The City and Consultant's representatives shall, in good faith, attempt to informally negotiate an agreeable resolution to any claim or dispute over either's obligations under this Agreement. All negotiations shall be conducted in a professional manner that avoids unnecessary losses, delays and disruptions to the Services. If the representatives cannot resolve the matter, each Party's executive managers shall attempt to resolve it. If the executive managers cannot reach a resolution, the City and Consultant will seek mediation with both parties sharing the costs of the mediator and each party responsible for its own costs of mediation. Litigation shall only be instigated as a last resort.

9.2 Any legal action will be venued in Kennebec County. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Maine without regard to its conflicts of laws provisions.

Article 10 - Waiver of Consequential Damages

In no event shall either Party be liable for any indirect, consequential, punitive, exemplary, incidental or similar damages of any kind whatsoever, including damages for loss of business profits, business data, goodwill, business opportunity, business, revenue, or any other pecuniary loss, in relation to this Agreement or any work order, whether or not the relevant loss or damage was foreseeable, or that Party was advised of the possibility of such loss or damage, and regardless of the legal theory or basis for such claim.

Article 11 – Termination

11.1 This agreement may be terminated by either party with ten (10) business days' notice, in which case a final invoice shall be provided to the City by the Consultant and no further action is required by



either party. In such case, Consultant shall immediately discontinue performance of the Services on the date specified in such notice and shall preserve work in progress pending instructions by the City. Consultant is entitled to, as complete and full compensation, payment for all Services satisfactorily performed to the date of termination at the rates agreed. The City is entitled to all work products in their current / final version.

11.2 If Consultant breaches any term or condition of this Agreement and fails to cure the same within seven (7) business days after written notice from the City, the City may terminate this Agreement or any portion thereof, as the City elects.

Article 12 – Independent Contractor

Consultant is an independent contractor having responsibility and control over the means and details of performing the Services. Consultant is responsible for payment of all state, federal, foreign or local taxes, including without limitation, income tax, withholding tax, and social security tax or pension contribution, on the funds distributed to the Consultant from City.

Article 13 – Severability

This Agreement reflects the parties' entire Agreement and supersedes all prior Agreements, either written or oral. If any portion of this Agreement is found void, only that portion shall be deemed stricken. These terms and conditions survive the completion of the Services under and the termination of the Agreement, whether for cause or for convenience.

Article 14 – Safety

Consultant shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, as well as with all of site-specific safety requirements.

Article 15 – Miscellaneous

15.1 Signatures and Counterparts. This Agreement may be executed in counterparts and shall constitute an agreement binding on all parties notwithstanding that all parties are not signatories to the original or the same counterpart provided that all parties are furnished a copy or copies thereof reflecting the signature of all parties.

15.2 This Agreement may be amended only by written instruments signed by both the City and Consultants as provided above. To the extent of a conflict between the terms of this Agreement and the terms of any attached proposal (Appendix A, Appendix B, or otherwise) the terms of this Agreement shall control.

The City and Consultant are signing this Agreement as of the Effective Date.



In witness thereof, the parties hereto have executed this Agreement on the day and date set forth above.

City of Hallowell, Maine.

Levine Planning Strategies, LLC

By:

By:

Name:

Name: Jeff Levine, AICP

Title:

Title:

Date:

Date: