



Memorandum

To: Town Council
From: Thomas Dansie, Director of Community Development
Date: June 3, 2022
Re: Housing Consultant Contract

The Town has been addressing housing and housing attainability for many years.

This effort began in the early 2000's with the adoption of the Moderate Income Housing Development Overlay Zone. This zone enabled the development of the Red Hawk subdivision, a mixed income and mixed housing-type project that has successfully provided affordable housing for the past 10+ years.

More recently the Town saw the development of six income-restricted housing units in the Moenave subdivision. The deed restrictions on these units require annual verification of the income and rents associated with the units.

The Town is continuing to explore options to increase housing attainability. The Town recently concluded a housing study, and a significant portion of both the existing General Plan and proposed General Plan update address housing attainability. Both the Housing Plan and General Plan recommend additional strategies and policies the Town should pursue to address housing affordability.

For all these reasons managing housing development and policy in Springdale is a complex and involved process. The Town will benefit from the guidance and input of a housing expert to help manage the Town's existing housing resources (Red Hawk and Moenave units), and to help develop and implement new housing policy as recommended in the Housing and General Plans.

Tracy Dutson of Tin Can Development is uniquely qualified and positioned to assist the Town in housing issues. Having served as a Project Manager for the Red Hawk project he is very familiar with the background and regulations impacting the Red Hawk development. As a private affordable housing consultant he has assisted a number of other resort communities with their housing needs. And as a resident of the Zion Canyon region he understands the unique challenges of housing in Springdale.

Mr. Dutson has already provided significant time and insight to the Town on housing issues on a pro bono basis over the past several years.

Staff recommends the Town engaging Tracy Dutson of Tin Can Development as the Town's Housing consultant. A proposed contract is attached.

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made as of **June 8, 2022** between **The Town of Springdale, Utah** (the “Town” or “Client”) and **Tin Can Development, LLC** (the “Consultant”).

All Exhibits attached hereto are attached and/or incorporated herein by reference and made a part of this Agreement for all purposes. In the event of any conflict between the documents, the provisions of such attachments shall govern.

1. Scope of Services. Consultant agrees, with good faith and due diligence, to provide the Town with professional consulting services. Specifically, Consultant will perform the services listed in the Scope of Services section in Exhibit A, attached hereto and executed by both Client and Consultant. Such services are hereinafter referred to collectively as “Services.” Consultant shall perform the Services in accordance with all applicable federal, state, and local laws, rules, and regulations. Client agrees that Consultant shall have ready access to Client’s staff and resources as necessary to perform the Consultant’s services provided for by this Agreement.

2. Rate of Payment for Services. Client agrees to pay Consultant for Services in accordance with the schedule contained in Exhibit B, attached hereto and executed by both Client and Consultant.

3. Invoicing. Client shall pay the amounts agreed to herein upon receipt of invoices, which shall be sent by Consultant, and Client shall pay the amount of such invoices to Consultant within 15 days of invoice date.

4. Expenses. Consultant may, from time to time, submit for the approval of the Client, written requests for reimbursements for reasonable out-of-pocket expenses incurred by Consultant on behalf of the Client that directly relate to the business and affairs of the Client, provided that any such request is in writing and includes reasonable supporting documentation such as invoices or receipts. Before incurring out-of-pocket expenses on Client’s behalf, Consultant will obtain Client’s consent to the expenditure, include the amount and purpose thereof.

5. Term of Contract. This Agreement shall commence upon on **June 8, 2022** and shall continue until **April 20, 2025** for the Project(s) whereupon Client shall, in writing determine if further services are needed as defined in Exhibit A. Either the Client or Consultant may terminate this Agreement at any time and for any reason by providing the other party with 30 days’ written notice of termination.

6. Extension and/or Renewal of Agreement. Client, in its sole discretion, may elect to extend the term of this Agreement. In the event Client elects to exercise this right, Client

shall provide a written notice to Consultant indicating its intent to extend the term of the Agreement.

7. Confidential Information and Records. Each party hereto (“Such Party”) shall hold in trust for the other party hereto (“Such Other Party”) and shall not disclose to any non-party to the Agreement, any confidential information of Such Other Party. Confidential Information is information, which relates to Such Other Party’s research, development, trade secrets or business affairs, but does not include information, which is generally known or easily ascertainable by non-parties of ordinary skill in real estate or finance practices.

Consultant hereby acknowledges that during the performance of this Agreement, the Consultant may learn or receive such Confidential Information of Client, and therefore, Consultant hereby confirms that either during or after the term of this Agreement, for as long as such information retains the characteristics of Confidential Information, all such information relating to the Client’s business will be kept confidential by the Consultant, except to the extent that such information is required to be divulged in order to enable Consultant to perform Consultant’s contract obligation. However, should Consultant deem it necessary to disclose Client’s Confidential Information to a non-party, Consultant shall first obtain Client’s written authorization prior to such disclosure.

Promptly upon the expiration or termination of this Agreement, or upon the request of Client, Consultant shall return to Client all documents and tangible items provided to Consultant or created by Consultant for use in connection with services to be rendered hereunder, including, without limitation, all Confidential Information, together with all copies and abstracts thereof. Consultant will not provide its proprietary working model to Client without a separate agreement to this end.

The provisions of Paragraph 7 of this Agreement shall survive the termination of this Agreement and remain in full force and effect thereafter.

8. Independent Contractor. Consultant is an independent contractor and neither Consultant nor Consultant’s staff is or shall be deemed to be employed by Client. Client is hereby contracting with Consultant for the services described on Exhibit A and Consultant reserves the right to determine the method, manner and mean by which the services will be performed. Consultant is not required to perform the services during a fixed hourly or daily time. If the services are performed at the Client’s premises, then Consultants time spent at the premises is to be at the discretion of the Consultant and subject to the Client’s normal business hours and security requirements. Consultant hereby confirms to Client that Client will not be required to furnish or provide any training to Consultant to enable Consultant to perform services required hereunder. The services shall be performed by Consultant or Consultant’s staff, and Client shall not be required to hire, supervise, or pay any assistants to help Consultant who performs the services under this Agreement. Except to the extent that the Consultant’s work must be performed on or with

Client's computers or Client's existing software, all materials used in providing the services shall be provided by Consultant. Client shall not provide any insurance coverage of any kind for Consultant or Consultant's staff, and Client will not withhold any amount that would normally be withheld from an employee's pay.

9. Arbitration. All controversies, claims, disputes, and matters in question arising out of, or relating to, this Agreement, or the breach thereof, shall be decided by arbitration in accordance with the provisions of this paragraph. The arbitration proceedings shall be conducted under the applicable rules of the Judicial Arbitration Mediation Services ("JAMS") or ADR Services, Inc. ("ADR"), or other mutually agreed upon alternative dispute resolution agency. Proceedings will be conducted within the County of Washington, and conducted in accordance with Utah law where any choice of law exists. The arbitration will consist of one arbitrator chosen by the Parties. If the Parties cannot agree upon an arbitrator, they shall submit to the procedure utilized by JAMS, ADR or other alternative dispute resolution agency, as the case may be, to choose an arbitrator. The decision of the arbitrator, including determination of amount of any damages suffered, shall be conclusive, final, and binding on the Parties, their respective heirs, legal representatives, successors, and assigns. Each party shall pay its own costs, including costs of discovery, deposition, attorney and witness fees; and the parties shall share equally the costs associated with the neutral arbitrator.

10. Taxes. Any and all taxes, except income taxes, imposed or assessed by reason of this Agreement or its performance, including but not limited to sales or use taxes, shall be paid by the Client. Consultant shall be responsible for any taxes or penalties assessed by reason of any claims that Consultant is an employee of Client and Client and Consultant specifically agree that Consultant is not an employee of Client.

11. Standard of Care. Consultant will exercise the degree of care and skill in accordance with standard industry practices. Consultant warrants to Client that the material, analysis, data, programs, and services to be delivered or rendered hereunder, will be performed by qualified personnel and will be performed in a good and professional manner.

12. Limited Warranty and Liability. Consultant and Client agree that Consultant will exercise the normal standard of care as described in Section 11 above in providing Client with information, modeling, interpretation, and consultation as per the Scope of Services. The choice of implementation of those Services and any application, grant, loan, or other funding is the responsibility of the Client. Consultant makes no other warranties, whether written, oral or implied, including without limitation, warranty of the successful award of any grant, loan or other funding, warranty of fitness for purpose or merchantability. In no event shall Consultant be liable for special or consequential damages, either in contract or tort, whether or not the possibility of such damages has been disclosed to Consultant in advance or could have been reasonably foreseen by Consultant.

Except for breach of Paragraph 7 herein, Consultant nor Client shall be liable to Such Other Party under this Contract for any incidental, consequential, indirect, special or punitive damages incurred by Such Other Party, whether in an action in contract or tort or otherwise, even if Such Other Party has been advised of the possibility of such damages. The total aggregate liability of Such Other Party for all damages arising in connection with this Agreement (with the exception of Paragraph 7) shall not exceed the total amount paid to Consultant by Client under this Agreement and shall include attorney's fees and costs.

13. Complete Agreement. This Contract contains the entire Agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of Consultant by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. Client acknowledges that it is entering into this Agreement solely on the basis of the representations contained herein.

14. Counterparts. This Agreement may be executed in counterparts each of which shall be an original and shall constitute one and the same agreement.

15. Applicable Law. Consultant shall comply with all applicable laws in performing Services but shall be held harmless for violation of any governmental procurement regulation to which it may be subject but to which reference is not made in Exhibit A. This Agreement shall be construed in accordance with the laws of the State of Utah, without reference to its conflicts of law provisions.

16. Scope of Agreement. If the scope of any of the provisions of the Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of this Agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform to law.

17. Additional Work. After receipt of an order, which adds to the Services, Consultant may, at its discretion, take reasonable action and expend reasonable amounts of time and money based on such order. Client agrees to pay Consultant for such action and expenditure as set forth in Exhibit B of this Agreement for payments related to Services.

18. Severability. If any term, provision, covenant, or condition contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement. Such provision shall be deemed amended to conform to the requirements of the law so as to be valid and enforceable in light of the Parties' apparent intent as evidenced by this Agreement. If such provision cannot be amended without materially altering the intention of the Parties, the tribunal having jurisdiction shall revise

Springdale, Utah

the provision in a reasonable manner, to the minimum extent necessary to make it binding and enforceable. If no such revision is possible, this Agreement shall be construed as if such provision had never been contained herein, provided that such provision shall be curtailed, limited, or eliminated only to the minimum extent necessary to remove the invalidity, illegality, or unenforceability and the rest of this Agreement shall remain in full force and effect.

19. Notices.

(i). Notices to Client should be sent to:

Town of Springdale
Rick Wixom, Town Manager
PO Box 187
Springdale, UT 84767

With a copy to:

(ii). Notices to Consultant should be sent to:

Tin Can Development, LLC
Tracy Dutson, Managing Member
PO Box 630265
Rockville, Utah 84763
tduts@yahoo.com

20. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party. Except for the prohibition on assignment contained in the preceding sentence, this Agreement shall be binding upon and inure to the benefits of the heirs, successors, and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date first above written. THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

Town of Springdale, Utah

Client

Tin Can Development, LLC

Consultant

Rick Wixom, Town Manager

Tracy Dutson, Managing Member

Attest

Darci Carlson, Town Clerk

Exhibit A

Scope of Services

- 1. Prepare project proformas and analysis,**
- 2 Act as liaison with non-profit and professional organizations,**
- 3. Act as project development manager / owner's representative,**
- 4. Provide compliance-related administrative support,**
- 5. Participate in discussions as required,**
- 6. Advise the Town Council and Planning Commission, as requested and as needed, on housing issues and housing policy, and**
- 7. Provide regulatory oversight regarding the Town's deed-restricted affordable housing resources.**

Future changes and/or additions to the scope of services may be made upon mutual Client and Consultant agreement.

THIS EXHIBIT A IS APPROVED AND AGREED to be effective as of **June 8, 2022**

Town of Springdale, Utah

Client

Tin Can Development, LLC

Consultant

Rick Wixom, Town Manager

Tracy Dutson, Managing Member

Attest

Darci Carlson, Town Clerk

Springdale, Utah

Exhibit B

Compensation for Services

\$150 per hour

Future changes and/or additions to the Scope of Services may be made upon mutual Client and Consultant agreement.

THIS EXHIBIT B IS APPROVED AND
AGREED to be effective as **June 8, 2022**

Town of Springdale, Utah
Client

Tin Can Development, LLC
Consultant

Rick Wixom, Town Manager

Tracy Dutson, Managing Member

Attest

Darci Carlson, Town Clerk