

## **AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT** is effective as of the \_\_\_ day of \_\_\_\_\_, 2014, by and between the Town of Pittsboro, North Carolina (hereinafter referred to as the Client), and Clarion Associates, LLC, located at 101 Market Street, Suite D, Chapel Hill, North Carolina 27516 (hereinafter referred to as the Contractor).

**WHEREAS**, the Client desires to undertake preparation of a Unified Development Ordinance; and

**WHEREAS**, the Client desires to engage the Contractor to render professional services in connection with this project; and

**WHEREAS**, the Contractor desires to undertake the project.

**NOW, THEREFORE**, the parties hereto mutually agree as follows:

**1. Scope of Services.**

The Contractor agrees to provide services to prepare a Unified Development Ordinance (hereinafter referred to as the UDO) for Client. The services to be performed are described in Exhibit A attached hereto and incorporated herein by reference (Exhibit A is titled "Scope of Services"). The Client agrees to provide supporting services to the Contractor as described in Exhibit A.

2. **Time of Performance.** The services of the Contractor are to commence on the date of execution of this Agreement by both Client and Contractor, and will be undertaken and completed consistent with the schedule set out in Exhibit A. The time of performance may be extended by mutual agreement of the parties.

3. **Method of Payment & Total Project Amount.** The Client shall compensate Contractor for its services in accordance with the Compensation Schedule set out in Exhibit B. It is understood and agreed that the total compensation and reimbursement to be paid for the professional services rendered under this Agreement shall not exceed the sum of \$\_\_\_\_. Contractor may invoice Client on a monthly basis for the percent of work completed on each task, and Client will pay Contractor within 30 days of receipt of the invoice, as long as the work is satisfactorily completed. By mutual agreement, the Client and Contractor may reallocate the budget among project tasks if the total budget amount remains unchanged.

#### **4. General Terms and Conditions.**

- A. Termination of Agreement. The Client shall have the right to terminate this Agreement, with or without cause, by giving written notice to the Contractor of such termination and specifying the effective date thereof, which notice shall be given at least 30 days before the effective date of such termination. In such event all finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement shall become the Client's property. Contractor shall be entitled to receive compensation in accordance with the Agreement for any satisfactory work completed pursuant to the terms of this Agreement prior to the date of termination.
- B. Changes. The Client may, from time to time, request changes in the scope of services of the Contractor to be performed hereunder. Such changes, including the increase or decrease in the amount of the Contractor's compensation, shall be mutually agreed upon between the Client and the Contractor.
- C. Assignability. Any assignment or attempted assignment of this Agreement by Contractor without the prior written consent of the Client shall be void; provided, however, that claims for money due or to become due Contractor from the Client under this Agreement may be assigned to a bank, or other financial institution, without such approval. Notice of any such assignment or transfer shall be furnished to the Client.
- D. Audit. The Client or any of its duly authorized representatives shall have access to any books, documents, papers, and records of Contractor which are pertinent to Contractor's performance under this Agreement, for the purposes of making an audit, examination, or excerpts. The Contractor shall maintain records for three years after the agreement ends.
- E. Ownership of Documents. Drawings, specifications, guidelines and other documents prepared by Contractor in connection with this Agreement shall be property of the Client. However, Contractor shall have the right to utilize such documents in the course of its marketing, professional presentations, and for other business purposes.
- F. Assignment of Copyrights. Contractor assigns to Client the copyrights to all work prepared, developed, or created pursuant to this Agreement. This includes the right to: 1) reproduce the work; 2) prepare derivative works; 3) distribute copies to the public; and 4) to display the work publicly. Contractor shall have the right to use materials produced in the course of this contract for marketing purposes and professional presentations, articles, speeches and

other business purposes. Nothing in this Agreement shall divest either party of its intellectual property.

- G. Governing Law. This Agreement has been executed by the parties hereto on the day and year first above written and shall be governed by the laws of the State of North Carolina. Contractor shall also comply with all applicable state and federal laws and regulations and resolutions of Client, and shall commit no trespass on any public or private property in the performance of any of the work embraced by this Agreement.

Subcontractors. Subcontractors may be utilized if approved by the Client. Ferrell Madden, an urban design and town planning firm based in Washington, D. C., is authorized by Client as a subcontractor, as appropriate.

- H. Notices. Any notice concerning the terms and conditions of this Agreement from Contractor to the Client shall be in writing and delivered, either personally or by mail (postage prepaid), by telegram or facsimile transmission and shall be addressed as follows:

Stuart Bass, AICP, CZP, Planning Director  
Town of Pittsboro  
635 East Street  
P.O. Box 759  
Pittsboro, North Carolina 27312  
Facsimile number: 919-542-7109  
Email: swbass@pittsboronc.gov  
Telephone number: (919) 542-1655

Notices to Contractor from Client shall be in writing and delivered, either personally or by mail (postage prepaid), by telegram or facsimile transmission and shall be addressed to:

Craig Richardson, Director  
Clarion Associates  
101 Market Street, Suite D  
Chapel Hill, North Carolina 27516  
Facsimile number: (919) 967-9077  
Email: crichardson@clarionassociates.com  
Telephone number: 919-967-9188

Notices shall be deemed effective upon delivery in the event of personal delivery, and after three (3) days when mailed, postage prepaid; if transmitted by facsimile or telegram, upon verified receipt of the electronic transmission.

Either party may change its address in reference to notices by written notification to the other party.

5. **Indemnification.** Contractor agrees to protect, defend, indemnify and hold the Client and its officers, employees, and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character in connection with or arising directly or indirectly out of this agreement and/or the performance hereof and caused by the negligence of the Contractor.
6. **Independent Contractor.** Contractor is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Contractor to perform work under the terms of the Agreement shall be and remain at all times, employees of the Contractor for all purposes. The Contractor, its agents and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees of Client.
7. **Certificate of Insurance.** Contractor agrees to procure all of the insurance specified below and shall submit a Certificate of Insurance, from an insurer duly authorized to do business in North Carolina, naming the Town of Pittsboro, North Carolina, as an additional insured:
  - A. **Workers' compensation insurance.** Workers' Compensation insurance for all employees who are engaged in the work under the agreement.
  - B. **Motor vehicle liability insurance.** Contractor shall take out and maintain during the life of this agreement, such motor vehicle liability insurance as shall protect Contractor while performing work covered by this agreement from claims for damages which may arise from operations by Contractor or by any other persons directly or indirectly employed by Contractor and the amounts of such insurance shall be as follows: On all motor vehicles owned, leased or otherwise used by Contractor in an amount not less than \$1,000,000.00 (combined single limit) for bodily injury including death and property damage combined.
  - C. **Professional liability insurance.** Contractor shall procure and maintain coverage in the amount of not less than \$1,000,000.00.
  - D. **Insurance Company.** The insurance company(ies) used by Contractor must be licensed to do business in the State of North Carolina.

8. **Inquiries Regarding Payment.** All inquiries regarding payment of invoices are to be directed to: Stuart Bass, AICP, CZP, Planning Director, Town of Pittsboro, P.O. Box 759, Pittsboro, North Carolina 27312. Telephone number: (919) 542-1655. Email: swbass@pittsboronc.gov
  
9. **Anti-discrimination Clause.** Client and Contractor do not discriminate against any person because of race, color, religion, national origin, gender, or handicap in employment or service provided.
  
10. **Extent of Agreement.** This Agreement represents the entire and integrated agreement between the Client and the Contractor and supersedes all prior negotiations, representations or agreement, either written or oral. This Agreement may be amended only by written agreement signed by both the Client and the Contractor.
  
11. **Mediation.** All claims, disputes, and other matters in question between the parties to this Agreement arising out of or relating to this Agreement concerning a breach thereof, may be submitted to non-binding mediation upon agreement of the parties. The cost of said mediation shall be split equally between the parties. Mediation conducted under this Agreement shall occur in Chatham County, North Carolina.
  
12. **Severability.** In the event that any provision of this Agreement shall be held to be invalid or unenforceable, the remaining provisions of this agreement shall remain valid and binding upon the parties hereto.

**CLARION ASSOCIATES LLC**

**PITTSBORO, NORTH CAROLINA**

**BY:** \_\_\_\_\_  
**Craig Richardson**

**BY:** \_\_\_\_\_  
**Bryan Gruesbeck**

**Title:** Director  
**Director**

**Title:** Town Manager  
**Town Manager**

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## **EXHIBIT A: SCOPE OF SERVICES**

### **Task 1: Project Initiation and Scoping**

#### **(a). Initial Review of Ordinances and Other Background Documents**

As a first step, Contractor will review in detail relevant background materials, including but not limited to: the Land Use Plan; Parks and Recreation Master Plan, other relevant plans and studies; the existing development regulations; the zoning map; administrative rules and interpretations of the current ordinances; examples of approved development permits, conditions associated with rezonings (as appropriate), and variances; current approaches to parks, open space, greenways requirements; and other relevant plans, ordinances, and policy documents identified by Town staff.

#### **(b). Initial Meetings, Interviews, and Reconnaissance**

After completion of the background review, the Contractor will:

- Meet with Town staff;
- Conduct interviews with stakeholders (citizens that represent different perspectives in the community), elected and appointed officials (e.g., review board members), and representatives from state agencies (if appropriate);
- Undertake reconnaissance; and
- Finalize the scope of work (if necessary).

As part of this effort, Contractor would develop a survey to assist in producing a methodical analysis and record of the input provided by the interviewees. This survey could be circulated to key Town staff for discussion. The interviews with Town staff would involve discussions of land regulation issues, including the types of changes that should be made in the UDO from the current regulations, and which plan policies need to be emphasized in the new UDO. These discussions will give the Contractor a better understanding of how the existing regulations work (and don't work) in practice, and help identify key issues and practical problems.

The interviews with stakeholders, elected officials, board and commission members, and representatives from state agencies (if appropriate) would focus on problems and concerns they have with the existing development regulations, changes that need to be made to the regulations, policies that need to be implemented from the Land Use Plan, and related matters.

During this set of interviews the Contractor will visit key sites and conduct other relevant reconnaissance of Pittsboro with selected staff to gain a better understanding of how land development issues are playing out in the Town.

### **(c). Kick-off Meetings and Public Forum**

Also during the trip, the Contractor would hold project kick-off meetings with an Advisory Committee, the Planning Board and/or Board of Commissioners (as appropriate), and conduct a public forum for members of the public. The purpose of these meetings and the public forum would be to inform these groups and the public about the project and its schedule, and to receive input and direction about project goals.

### **(d). Public Involvement**

The Town will establish an Advisory Committee to work and provide input on preparation of the UDO throughout the process.

There will be periodic public workshops and regular check-in meetings with Town staff, the Advisory Committee, and the Planning Board/Board of Commissioners at various points in the project. They are:

- During Task 1 (kick-off meetings and Public Forum, as described in Task 1);
- After completion of the Code Assessment (one meeting each with Advisory Committee, Planning Board and Board of Commissioners, and Public Forum, as described in Task 2);
- After completion of each of the two installments of the Public Review Draft of UDO (one meeting each with Advisory Committee, Planning Board and Board of Commissioners, on each installment, as described in Task 3);
- One public hearing after completion of the Public Hearing Draft of UDO (as described in Task 4).

The other public involvement tools that will be included in the project is a project website, set up by Contractor, to provide information about the project and its schedule (Task 1). New work products will be placed on the website when they are available for public review. The website will serve as a tool through which the public can comment on the process and the work products as they are completed.

<b>TASK 1: PROJECT INITIATION AND SCOPING – RESPONSIBILITIES AND DELIVERABLES</b>	
CONTRACTOR	TOWN STAFF
Review development regulations, plan documents, other documents and records.	Send copies of development regulations and plans, and other relevant documents to Contractor (including editable digital version of current zoning ordinance and other development regulations)
Draft survey for staff.	Circulate survey to staff, as appropriate.
Design and set up website.	Review and comment on website design.
Conduct interviews with staff and stakeholders.	Identify and coordinate meetings with staff and stakeholders.
Conduct reconnaissance of Town, with staff.	Organize and accompany Contractor on reconnaissance.
Facilitate and conduct kick-off meetings with Advisory Committee, Planning Board, Board of Commissioners.	Organize kick-off meetings and public forum.
Conduct Public Forum.	Participate in meetings and interviews with Contractor.
SCHEDULE	
Meetings: Three days to conduct interviews, reconnaissance, kick-off meetings, and Public Forum Completed: Two months after Project Initiation	

**Task 2: Code Assessment**

Based on information gathered in Task 1, Contractor will prepare a Code Assessment in Task 2 to refine the key issues and solutions to be addressed in the UDO, and provide a detailed outline of the proposed UDO structure if the key issues and solutions are addressed. The Code Assessment would consist of three components: a **Diagnosis**, a **Open Space and Recreation Memorandum**, and an **Annotated Outline**.

**(a). Diagnosis**

The purpose of the **Diagnosis** is to:

- **Identify the key issues that need to be addressed in the UDO** – in other words, the broad policy changes that need to be achieved. This will be based on:
  - The Town’s expectations, as expressed in the RFP, and subsequent meetings and interviews;
  - Input provided from the community, elected officials, boards and commissions, the Advisory Committee, stakeholders, and others, from the meetings, interviews, and other forms of communication received in Task 1;
  - The policy direction in the Land Use Plan and other planning documents; and
  - The Contractor’s independent evaluation of the current development regulations.

- **Analyze the current Pittsboro development regulations,** identifying the code sections to be modified and replaced in light of the key issues that need to be addressed. This analysis will focus on the strengths and weaknesses of the current ordinances, including:
  - Ways in which the current ordinances are ineffective or frustrating to use;
  - Areas of consistency and inconsistency between existing Town policies and practices, and policy direction in the Land Use Plan;
  - Ways to make the new document more user-friendly;
  - Process and procedure modifications to streamline the development review process;
  - Review Town requirements for parks, open space, and greenways to identify possibilities for clearer distinctions for recreation-related requirements;
  - Ways the current zoning districts can be modernized; and
  - Necessary changes related to new statutory and/or case law.
- **Summarize national best practices that might be considered for incorporation into the new UDO,** such as solutions to address the key issues and challenges. This analysis will be based on lessons learned from Contractor’s work on other code projects in North Carolina and around the country, and review of relevant State Statutes.
- **Summarize and discuss the most appropriate zoning framework for the new UDO,** based on Contractor’s experiences in updating codes throughout the nation. For example, it may be appropriate to draw concepts and tools from a range of different zoning approaches (e.g., euclidean zoning, performance zoning, planned developments, form-based regulations, and hybrid zoning).

**(b). Memorandum on Open Space and Recreation Requirements**

Contractor will prepare a memorandum to serve as a foundation for adjusting the Town’s open space and recreation requirements for new development, including recommended goals for in-lieu provisions and recommendations for adjustments to requirements. The report will review existing regulations and practices, review existing facilities and population statistics, review requirements in place in other jurisdictions, and review land values and existing Level of Service standards. The memorandum will address the distinctions between parks, open space, and greenways needs and requirements, and suggest adjustments to regulations, adjustments to Administrative Procedures for managing

open space and recreation requirements, and suggest proposed payment-in-lieu amounts. The memorandum will also review Pittsboro's current legislative authority to develop a system of impact fees for recreation facilities, describe how an impact fee system could work, and suggest a process that could be initiated to pursue an impact fee system should the Town choose to do so.

### **(c). Annotated Outline**

The Annotated Outline provides a detailed outline of the structure of the new UDO document if the key issues identified in the Diagnosis are addressed. This is done for the purpose of providing staff, the Advisory Committee, the Planning Board, the Board of Commissioners, other boards, stakeholders, members of the development community, and the public an opportunity to review the overall structure of the proposed revisions before the actual drafting begins. It would include an article-by-article outline of the new UDO, and an explanation of the purpose and nature of each article and major section in layperson's language. The annotated outline would set out the proposed structure of the new UDO document, and provide commentary explaining the purpose and scope of each article and section. The issues to be addressed in the Annotated Outline would include, at a minimum, the issues outlined above as the focus of the Diagnosis.

The first draft of the Code Assessment would be for internal staff review only. That review would allow staff to provide the Contractor with substantive feedback and identify any factual errors or major issues that should be adjusted in the document prior to public review. After receiving one set of written consolidated comments from staff, Contractor and staff would reach consensus about revisions, and Contractor would make the agreed-upon changes. The Code Assessment would then be made available to the public and be posted on the website.

### **(d). Public Meetings**

Contractor would then meet with the Advisory Committee, conduct a work session with the Planning Board/Board of Commissioners, and conduct a public forum on the Code Assessment and Recreation Requirements Memorandum. At the work session with the Planning Board/Board of Commissioners, the Contractor would look for direction from the Board of Commissioners on these documents, and direction on the proposed structure of, and substantive changes that need to be made to the new UDO as proposed in the Annotated Outline.

**TASK 2: CODE ASSESSMENT - RESPONSIBILITIES AND DELIVERABLES**

<b>CONTRACTOR</b>	<b>TOWN STAFF:</b>
Prepare staff review draft of Code Assessment and Open Space and Recreation Memorandum	Review and provide consolidated written comments on staff draft of Code Assessment and Recreation Memorandum, conference with Contractor to reach mutual agreement on revisions
Prepare Public Review Draft of Code Assessment and Open Space and Recreation Memorandum	Distribute Documents
Conduct public forum on Code Assessment and Open Space and Recreation Memorandum	Organize public forum and work sessions
Conduct work sessions with Advisory Committee, Planning Board/ Board of Commissioners on Code Assessment and Open Space and Recreation Memorandum	
Receive direction	Provide direction to Contractor
<b>SCHEDULE</b>	
Meetings: One and one-half days of meetings with Advisory Committee, Planning Board/Board of Commissioners Completed: Four months after completion of Task 1	

**Task 3: Draft Unified Development Ordinance (UDO)**

**(a). Staff Draft**

Based on the Code Assessment, Open Space and Recreation Memorandum, and the public input and Board of Commissioners direction in Task 2, the Contractor will prepare a new UDO that is user-friendly and includes the agreed-upon changes from the Code Assessment. The new UDO would be clear, concise, and drafted with the goal of efficient administration. It will emphasize the use of graphics, tables, and charts to explain zoning, subdivision, and land use concepts, instead of voluminous text. Areas that would benefit from illustrations will be noted (though most illustrations will not be produced until language is refined in a later draft). The draft will include commentary where necessary to explain changes from current practice and the rationale behind new provisions. The draft UDO will include a land dedication formula and Payment-in-Lieu process for open space and recreation requirements. Because the new UDO will likely include a substantial amount of new information, it will be difficult for any review body, or the public, to digest in a single review or meeting. Therefore, the drafting process will be divided into two manageable installments

consisting of related provisions as follows: 1) procedures, administration, and districts; 2) uses, development standards, and definitions. The exact composition and schedule for the drafting will be determined in consultation with the Town's project manager following the completion of the Code Assessment. The draft UDO will include:

- Zoning regulations;
- Payment-in-lieu provisions for satisfying open space and recreation requirements;
- Subdivision regulations;
- Floodplain management regulations;
- Riparian buffer regulations;
- Storm water development regulations; and
- Other Town development related regulations, as appropriate.

After completion of the second installment, and working in conjunction with Town staff, the Contractor will also make proposed revisions to the zoning map.

As with the Code Assessment, the Contractor will prepare a "staff draft" of each installment, for internal staff review only. While staff is reviewing the first installment, the Contractor would begin drafting the second installment. In this way, drafting and staff review proceeds in a relatively efficient way. Town staff would consolidate and reconcile comments on each installment and present them as consolidated written comments to Contractor.

#### **(b). Public Review Draft and Meetings**

After receiving one set of consolidated comments from staff on each installment, Contractor and Town staff will reach consensus about revisions, and Contractor will make the agreed-upon changes. The draft installment will then be made available to the public and placed on the website. Once the draft installment is sent out for public review, the Contractor will conduct a work session with the Advisory Committee, and a work session with the Planning Board/Board of Commissioners (if appropriate) on each of the installments. The purpose of these meetings is to receive comment and input and direction on the draft installments.

<b>TASK 3 DRAFT UDO -- RESPONSIBILITIES AND DELIVERABLES</b>	
<b>CONTRACTOR</b>	<b>TOWN STAFF:</b>
Prepare staff draft of UDO (in two installments)	Review and provide written consolidated comments on installments; provide input on illustrations/graphics
Prepare Public Review Draft of UDO (in two installments)	
	Provide current zoning map in ARC
Working in conjunction with Town staff, prepare revised zoning map	Work in conjunction with Contractor to prepare revised zoning map
	Distribute Public Review Draft of installments, and zoning map, to public; organize work sessions
Conduct work sessions on each installment, with Advisory Committee, Planning Board,/Board of Commissioners	
<b>SCHEDULE</b>	
Meetings: one and one-half days of meetings on each installment (total of three days of meetings)	
Completed: Twelve months after completion of Task 2	

#### **Task 4: Public Hearing Draft of UDO**

##### **(a). Public Hearing Draft of UDO**

Based on input from the Advisory Committee, Planning Board, other boards, stakeholders, the public, and direction from the Board of Commissioners during Tasks 1, 2, and 3, the Contractor will make necessary changes to the draft UDO, and deliver a Public Hearing Draft of the new UDO and zoning map to Town staff. The document will be placed on the Town's website. This draft will include a consolidated table of contents, illustrations, and an index for ease of use by reviewers. It will be produced in a common word processing format (Microsoft Word) and includes \$7,000 of finalized graphics and illustrations, as mutually agreed to by Contractor and Town staff. The document will be in Microsoft Word and Adobe portable document format (pdf), and will include the search and linking capabilities associated with this software platform. The Contractor will also provide some recommendations on long-term document management and codification maintenance. The document will be prepared so it can be placed on the Town's website.

**(b). Public Hearings and Work Sessions**

Once the Public Hearing Draft of the UDO is made available, Contractor will conduct one public hearing with the Town Board of Commissioners, one work session with the Town Planning Board, and one follow-up session to present the Public Hearing Draft of the UDO and answer questions. Contractor is available to attend additional public hearings and work sessions on a time and materials basis.

**(c). Final UDO Revisions for Adoption**

Based on direction from the Town following its work sessions and public hearings on the Public Hearing Draft of the UDO, Contractor is available to make final revisions to the Public Hearing Draft and deliver a final version of the UDO on a time and materials basis.

<b>TASK 4: PUBLIC HEARING DRAFT OF UDO -- RESPONSIBILITIES AND DELIVERABLES</b>	
<b>CONTRACTOR</b>	<b>TOWN STAFF:</b>
Prepare Public Hearing Draft of UDO, and \$7,000 of graphics, and zoning map	Distribute Public Hearing Draft of UDO
Conduct one public hearing on Public Hearing Draft of UDO with the Town Board of Commissioners, one Work Session with the Planning Board, and one follow-up session.	Organize Public Hearing and Work Session and follow-up meeting
<b>SCHEDULE</b>	
Meetings: One public hearing with Board of Commissioners, one Work Session with Planning Board, and one follow-up session. Completed: Two months after completion of Task 3	

**EXHIBIT B: COMPENSATION SCHEDULE**

<b>Task</b>	<b>Budget</b>
<b>Task 1: Project Initiation &amp; Scoping</b>	\$11,430
<b>Task 2: Code Assessment</b>	\$38,060
<b>Task 3: Draft Unified Development Ordinance</b>	\$61,390
<b>Task 4: Public Hearing Draft of UDO</b>	\$16,960
<b>Graphics</b>	\$ 7,000
<b>Project Website</b>	\$ 5,500
<b>Miscellaneous (copying, travel, etc.)</b>	<u>\$ 700</u>
<b>TOTAL COST</b>	<b>\$141,040</b>