

TOWN OF SUPERIOR
RESOLUTION NO. R-26
SERIES 2024

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING THE PROFESSIONAL SERVICES AGREEMENT WITH CUSHING TERRELL FOR CONSULTING SERVICES TO UPDATE THE TOWN'S COMPREHENSIVE PLAN

WHEREAS, the Town desires to update the 2012 Comprehensive Plan to ensure implementation of the community's vision, goals and objectives over the coming decade; and

WHEREAS, the Board of Trustees finds it is in the best interest of the public health, safety and welfare of the Town to select Cushing Terrell as the lead consultant for the Comprehensive Plan update.

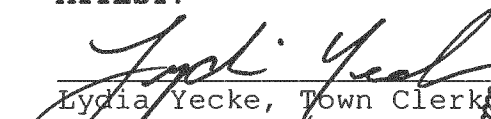
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:

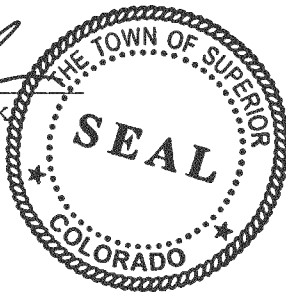
Section 1. The Agreement between the Town and Cushing Terrell is hereby approved in substantially the same form as attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 10th day of June, 2024.


Mark Lacis, Mayor

ATTEST:


Lydia Yecke, Town Clerk



AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this 26 day of June, 2024 (the "Effective Date"), by and between the Town of Superior, a Colorado municipal corporation with an address of 124 East Coal Creek Drive, Superior, CO 80027, (the "Town"), and CTA, In. DBA, Cushing Terrell, an independent contractor with a principal place of business at 1700 Broadway, Suite 1200 Denver, CO 80290 ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires professional services; and

WHEREAS, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required professional services.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SCOPE OF SERVICES

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. TERM AND TERMINATION

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

III. COMPENSATION

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor \$200,800. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the Town for such fees, costs and expenses.

Contractor shall not be paid until the Scope of Services is completed to the satisfaction of the Town.

IV. PROFESSIONAL RESPONSIBILITY

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

B. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Because the Town has hired Contractor for its professional expertise, Contractor agrees not to employ subcontractors to perform any work under the Scope of Services.

D. Contractor shall at all times comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Clean Water Act, 33 U.S.C. § 1251, et seq.; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

V. OWNERSHIP

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or

change such work without providing notice to or receiving consent from Contractor; provided that Contractor shall have no liability for any work that has been modified by the Town.

VI. INDEPENDENT CONTRACTOR

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

VII. INSURANCE

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.
3. Professional liability insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

VIII. INDEMNIFICATION

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability,

damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

IX. MISCELLANEOUS

A. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

B. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. *Integration.* This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

E. *Notice.* Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

F. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

H. *Assignment.* Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

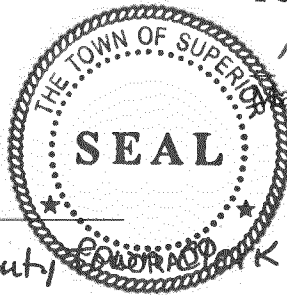
I. *Governmental Immunity.* The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. *Rights and Remedies.* The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. *Subject to Annual Appropriation.* Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF SUPERIOR, COLORADO



Mark Lacis

Mark Lacis, Mayor

ATTEST:

Lydia Yeckel

Lydia Yeckel, Town Clerk
Shannon Dujardin, Deputy

CONTRACTOR

By:

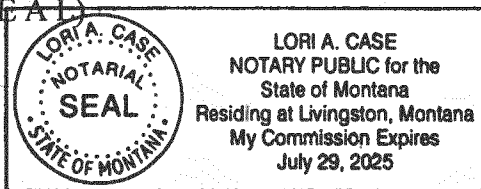
Wayne Freeman
Wayne Freeman, Principal

STATE OF ~~COLORADO~~ *Montana*
COUNTY OF *Park*) ss.
)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 13 day of June, 2024, by Wayne Freeman as Principal of Cushing Terrell.

My commission expires: July 29, 2025

(S E A L)



Lori A. Case
Notary Public

EXHIBIT A SCOPE OF SERVICES

Contractor's Duties

During the term of this Agreement, Contractor shall perform the following duties, as directed by the Town:

Phase I

Task 1.1: Project Management & Administration

We are committed to the active participation of all of our team members as a part of this effort. To manage the day-to-day activities, project timelines, and budget, Nora Bland (project lead) will be available to the Town Project Manager throughout the process. Nora will attend project management check-ins, and be responsible for the following deliverables:

- Contract scope of work refinement and finalization
- Project management meetings
- Scheduling and project administration
- Task management and quality controls
- Subcontractor coordination and contract administration
- Monthly invoicing

Task 1.2: Outreach & Engagement Plan

Cushing Terrell will work with Town representatives to collectively prepare an Outreach and Engagement Plan to address the project needs and confirm an acceptable communications program. This task will:

- Establish goals for engagement
- Identify key stakeholders/partner organizations
- Establish a flexible and adaptable engagement schedule
- Prioritize engagement strategies and outreach methods
- Determine overseeing groups/committees
- Identify underrepresented groups targeted for outreach

One of the primary goals is to creatively engage a broad spectrum of community stakeholders through the Comprehensive Plan Update process – including residents, business and property owners, service providers, non-profits, and other community partners. We will strategically spread different outreach and engagement efforts out over the course of the project to ensure ample opportunities for input are available. The following subtasks will be included in the Outreach and Engagement Plan.

Subtask 1.2.A: Project Website & Branding

Our team will work with staff to develop content for a project webpage hosted on the Town Website. The webpage will serve as the main information portal for the project so that the community can learn about the Comprehensive Plan. It will also have multiple interactive tools for community members to give input throughout the duration of the project. Our in-house

branding and marketing experts will develop a project logo and branding templates to create a distinct identity that will be reflected in all work products and materials.

Subtask 1.2.B: Community Survey

The project team will develop an online survey early in the process to initiate the visioning phase of the Comprehensive Plan Update. The results of this survey will help determine where specific focus will be placed around planning elements.

Subtask 1.2.C: Community Workshops

Cushing Terrell will plan and facilitate up to five large-scale community workshops. These workshops will correspond to project phases and each will be designed to answer a question, solve a problem, or confirm community priorities. These meetings will be held in-person and will feature graphic visuals, 2D and 3D models depicting different development types and density scenarios, corridor conditions, and capital improvements. Workshops will be interactive using a variety of tools like live polling, dot voting, density mapping using 3D models, and a capital spending exercise, among others.

Subtask 1.2.D: Community Forums / Speaker Series

Our team will plan, promote, and facilitate up to five Community Forums that could feature local or guest speakers on topics that have been elevated by the community in early engagement sessions. If the topic was affordable housing, for example, we would assemble a group of local housing experts to have a short panel discussion followed by an interactive community forum to address specific questions and problems. This will provide an opportunity for community members to better understand the nuances of local issues and to collectively brainstorm solutions. These meetings are assumed to be held in-person.

Subtask 1.2.E: Pop-ups

Rather than asking community members to take time out of their busy schedules to come to a public meeting, we set up “pop-ups” at grocery stores, transit stops, and other places in the community where people are already gathering. We also tag onto events to leverage its attendance. This way, we can reach folks who don’t normally show up to Town-led public meetings. We have budgeted for three (3) Pop-ups.

Subtask 1.2.F: Planning Commission & Town Board Meetings

To ensure coordination with the Planning Commission and Town Board, we will assist the staff in preparing presentation materials as part of the Plan Update process. It is assumed up to three updates will be scheduled at key milestones throughout the estimated 1.5-year process (in addition to the Plan Approval hearing process).

Phase II: Data Collection & Analysis

Phase II begins with data collection and research. Our team will ask questions, listen, and define the information we need to communicate back to the public in an efficient and understandable way. Intuitive exploration of ideas is also integral to our process as we address:

- Holistic decision making
- Strategic reinvestments
- Synergy between people, space, and environment

Task 2.1: Data Collection

Our process begins with research. We will identify materials necessary to develop a baseline of information that will inform the Plan Update. We will build off of previous planning work, which may include:

- 2012 Comprehensive Plan
- 2014 Transportation Plan and any relevant work available from the current update effort
- 2017 NW Superior Planning Area Outreach and Recommendations
- 2019 Water Conservation Plan
- 2021 Parks, Recreation, Open Space and Trails Master Plan
- ULI Marshall Fire Recovery Advisory Services Panel Report
- 2022 Sustainability Action Plan
- 2022 Coyote Ridge Open Space Master Plan
- Housing Needs Assessment
- Boulder County Community Wildfire Protection Plan
- Boulder County Hazard Mitigation Plan with Superior Annex
- Mountain View Fire District Community Wildfire Protection Plan
- Boulder County Hazard Mitigation Plan
- Mountain View Fire District Community Wildfire Protection Plan

Task 2.2: Community Character Inventory

Our team will review local development patterns and neighborhood amenities that contribute to Superior's sense of place. This inventory will consider neighborhood context and will help define the nature of new development and redevelopment, and how this affects the overall community character.

Task 2.3: Land Use & Zoning Code Review

It is critical that our team familiarizes ourselves with the current land uses, zoning regulations, historic resources, and building code requirements. While a detailed code audit is not part of this Plan Update, we will conduct an initial scan of codes that regulate development to identify areas where they could be improved. We'd like to answer the question: "If our codes are not allowing/producing the desired type of development, what changes need to be made?" Primary scope objectives will include:

- Review existing development and building codes and related policies
- Identify current best practices (locally, regionally, nationally)
- Define gaps and recommendations for new policy or code amendments

Task 2.4: Market Analysis

To inform the comprehensive planning effort and help prioritize shorter-term redevelopment opportunities for Superior, Leland Consulting Group will conduct a thorough market analysis across key land use categories: residential, retail, office, and industrial/flex, including sub-category breakouts. This analysis will begin by considering national and regional trends that may affect real estate development potential locally, along with an overview of demographic, industry mix, and employment conditions, including growth projections foreach. This contextual research will be combined with available information on supply conditions and visitation patterns for those same land use categories to arrive at 10-year and 20-year demand estimates to help calibrate land

capacity needs in the future land use plan. For each land use, the market analysis findings will involve both quantitative demand estimates and strategic high-level discussion of locations within Superior where redevelopment opportunities seem most promising.

Subtask 2.4.A: Housing Element Integration

The Town anticipates adoption of their first Housing Plan summer of 2024. The Comprehensive Plan will advance the goals and policies identified within the Housing Plan, particularly in terms of location of future housing, and other land use changes and policies to support development of affordable housing.

Subtask 2.4.B: Leakage and Visitation Analysis

The retail portion of the market analysis will include a detailed investigation of household spending power and shopping behaviors across by product and store categories, so as to understand where Superior retailers might be able to recapture some spending “leakage” currently occurring (i.e. where Superior residents appear to be spending much of their retail and dining budgets in other municipalities). In the past, this type of gap analysis was conducted using approximations of spending power and store sales from data sources that could be unreliable or out-of-date. Leland Consulting Group now has access to much more fine-grained data on patterns of actual foot-traffic and home locations of visitors via confidential cell-phone tracking from the subscription provider, Placer. This data is invaluable in being able to precisely determine actual retail trade area boundaries and a host of other helpful diagnostic information.

Subtask 2.4.C: Fiscal Analysis

The Town has asked that a fiscal analysis be included as part of the Plan Update. Using per-capita estimates (and other multiplier metrics, as appropriate) of service costs, derived from analysis of recent Town budgets and population estimates, Leland can provide, for a no-action policy scenario and up to two action alternatives, reasonable approximations of likely impacts to major revenue streams (mainly sales and property taxes) and major expenditure categories. Typically, this will be limited to major General Fund budget line items, but could be expanded to include non-General Fund activities if needed. This fiscal analysis typically involves some additional interviews with Finance and other major department heads to ensure correct interpretation of costs and revenues.

Task 2.5: Climate Action, Resiliency, & Hazard Mitigation

Lotus will review and analyze existing policies, plans, and programs related to sustainability for the Town, region, regional partners, and the State to understand the current conditions and identify existing initiatives and infrastructure that will support planning efforts. After a thorough review of all existing community and regional documents and data, Lotus will conduct a gap assessment to identify opportunities for the Update to improve access to the Town’s services and sustainability efforts, embed environmental justice considerations government-wide, and create a foundation for future initiatives and programs. Lotus understands that a holistic assessment and perspective on the Town is imperative to ensure we co-create a dynamic, forward-looking Update that enables Superior to evolve and meet changing future conditions.

Lotus will develop a matrix to visually illustrate where gaps exist and where there is an opportunity for additional strategies and goals to advance sustainability, resiliency and hazard mitigation in the Town.

Task 2.6: Transportation & Mobility Analysis

The Transportation Plan will be updated concurrently with the Comprehensive Plan. Outreach efforts for both plans will be combined, as feasible, with Cushing Terrell acting as the lead outreach consultant to ensure alignment with both plans. The Comprehensive Plan will include high-level information about transportation and mobility goals and policies. Detailed mapping, specific recommendations, and implementation strategies will be contained in the Transportation Plan.

Phase III

Task 3.1: Growth Alternatives Analysis

Utilizing data from the Market Assessment, as well as historic development patterns and growth projections, we will develop several growth alternative scenarios based on our understanding of what the community's vision for growth in Superior could look like over the next 5-20 years. This analysis will test assumptions related to existing residential and commercial densities to their potential as envisioned by the community. Since growth in Superior will come almost exclusively through redevelopment, Cushing Terrell and Leland will test different scenarios in redevelopment areas to understand how to achieve economies of scale and provide affordability.

The growth alternatives will “physically” show how development may best be accommodated over time, based on market demand, land valuation, and mobility and infrastructure needs. Typically, the analysis will consider two development alternatives, a dispersed/low density development approach and a concentrated growth scenario. These will be compared to the current “as-is” or Do-Nothing baseline. We will present the alternatives to the community for feedback and consequently develop a Preferred Alternative that will inform the Future Land Use Map.

Task 3.2: Future Land Use Map

Building from the 2012 Comprehensive Plan's Future Land Use Map (FLUM) and evaluation of the projected growth allocations, our team will work closely with staff to develop a new FLUM. The FLUM will illustrate growth areas and future land uses as envisioned by the community. We will also consider current land uses, growth and market projections, development feasibility, current zoning and development standards concurrently. The FLUM will be supported by policy recommendations to accommodate proposed land uses in the Town and three-mile area. We will continue to work with staff to address revisions and outline assumptions associated with the Preferred Alternative Scenario.

Task 3.3: Draft Policy Recommendations & Implementation Strategies

We will develop a series of draft policy recommendations based on the Preferred Alternative Growth Scenario and findings from existing conditions analyses. An Implementation Strategies Matrix will outline action items for plan implementation, responsible parties, and general target dates/timelines. The Matrix will also identify specific priority actions for the near term, as well as actions that, based on organizational capacity, are anticipated to follow as priorities in medium and longer time frames. It will also identify potential regional and community partners and funding sources, as applicable.

Phase IV

Task 4.1: Draft Comprehensive Plan

We will distill the information gathered from the community and staff and provide a plan that defines the community vision, goals and objectives required to achieve the vision. The Draft will describe the community outreach process, the preferred growth scenario, and recommendations and implementation strategies. The Draft Plan will be a visual expression of the planning process and include high-quality graphics to articulate design principles and other key takeaways.

Task 4.2: Final Draft Comprehensive Plan

Our team will make adjustments to the Draft Plan based on feedback from the community, stakeholders, Town staff, and elected officials. The revised plan narrative and associated maps and visualizations will be incorporated into a highly graphic and user-friendly Final Draft Comprehensive Plan.

Task 4.3: Final Plan Approvals

Cushing Terrell will prepare Draft and Final Draft presentations to Planning Commission and Board of Trustees as part of the public review process. The schedule for plan review and public hearings will be determined by staff. We will provide the Town with a Final Comprehensive Plan and all supporting digital files post-plan adoption.