

Resolution No. R-11-2023
Adopted: June 12, 2023

A Resolution of the Mayor and Council of the Town of Kensington Authorizing a Contract with the Urban Land Institute to establish a Technical Advisory Panel for the strategic review of Economic Development, Connectivity, and Mobility improvements within Kensington's Town Center.

WHEREAS, pursuant to Chapter II, "Government and Administration", Article 4, "Purchasing and Contracts", Section 2-405, "Professional Services Contracts", the Council may decide by an extra-majority vote (defined as one more than a majority of those present and voting) to authorize the Town Manager to enter into negotiated procurement for professional services rather than advertise; and

WHEREAS, the Town requested a proposal from the Urban Land Institute (ULI) to establish a Technical Advisory Panel for the strategic review of Economic Development, Connectivity, and Mobility improvements within the Town; and

WHEREAS, the Urban Land Institute provided a Contract proposal to the Town for services to review Strategies for Economic Development, Connectivity, and Mobility in Kensington's Town Center (EXHIBIT A); and

WHEREAS, the Mayor and Council have determined that it is in the public interest to authorize the Town Manager to enter into a contract with the Urban Land Institute for the contract price of \$25,000.00, on the terms and conditions as set out in the attached Agreement.

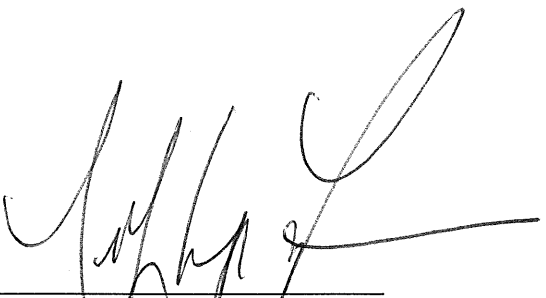
NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Kensington, Maryland, that the Town Manager be and is hereby authorized to enter into a contract in substantially the form attached, with a contract price not to exceed \$25,000.00, with the Urban Land Institute for a Technical Advisory Panel.

Adopted by the Town Council this 12th day of June, 2023.

Effective this 12th day of June, 2023.

ATTEST: TOWN OF KENSINGTON, MARYLAND

By: 
Susan C. Engels, Clerk – Treasurer


Tracey C. Furman, Mayor

ULI Technical Assistance Panel Contract

This Technical Assistance Program Agreement ("Agreement") is entered into effective the **30th day of May, 2023**, between **ULI – The Urban Land Institute on behalf of the Urban Land Institute (Washington)** (hereinafter "ULI") and the **Town of Kensington**, a Maryland municipal corporation ("Agency"). The foregoing entities are collectively referred to herein as the "Parties."

SERVICES; SCHEDULE OF PERFORMANCE: The Services to be provided involve a technical assistance panel ("TAP") to be held on **Wednesday and Thursday, July 12-13, 2023**, and entitled **Connecticut Avenue and University Boulevard Pedestrian Safety and Economic Development Plan**. The TAP program and the schedule of services to be provided by ULI are more particularly described in the Scope of Services attached hereto as **Exhibit A** and incorporated herein by reference.

STANDARD OF CARE: ULI shall perform all services under this Agreement in a skillful and competent manner, consistent with all applicable laws and with the educational mission of ULI. ULI warrants that all TAP work product will not infringe upon the intellectual property rights of any third party. Except as stated above, ULI makes no express or implied warranties regarding the work product to be provided hereunder, and all work product is provided "AS IS."

COMPENSATION: Compensation for the above TAP services shall be **\$25,000**. Payment will be collected in a single installment upon execution of this Agreement.

USE/OWNERSHIP OF WORK PRODUCT: Any work product arising from the TAP shall be considered a "work made for hire" and shall belong to the Agency, and any ULI recommendations arising out of the TAP may or may not be implemented by the Agency in its discretion. Notwithstanding the foregoing, it is further understood that ULI shall have a non-transferable royalty-free perpetual license to make such non-commercial use of the TAP work product as it may deem desirable. ULI agrees that the TAP work product will not include confidential information provided by the Agency without its permission, except as otherwise stated in this Agreement.

TERMINATION: This Agreement may be terminated in the event of a material breach by a party, which breach is not cured within fifteen (15) days after written notice thereof from the non-breaching party. If this Agreement is terminated for any reason prior to completion of the TAP project, except due to a material breach by ULI that is not cured, ULI shall be entitled to be paid in full for those services adequately completed prior to the notification of termination.

FORCE MAJEURE: Failure by either Party to perform its duties and obligations due to unforeseeable circumstances beyond its reasonable control, and not due to its negligence, including acts of nature, acts of terrorism, riots, labor disputes, fire, flood, explosion, and governmental prohibition may excuse or delay performance by that Party. The non-declaring Party may cancel the Agreement without penalty if performance does not resume within 30 days of the non-performance. In the event of such cancellation, ULI shall be paid the reasonable value of the services completed through the date of termination.

NOTICES: Notices and other communications provided for herein shall be given in writing by certified mail, return receipt requested, by receipted hand delivery, by courier (UPS, Federal Express or other similar and reliable carrier), by e-mail, or by fax showing the date and time of successful receipt. Notices shall be sent to the individuals who signed the contract using the contact information following the signatures. Each such notice shall be deemed to have been provided at the time it is actually received. By giving notice, either Party may change the contact information.

CONFIDENTIAL INFORMATION: Each Party, including its agents and subcontractors, to this contract may have or gain access to confidential data or information owned or maintained by the other Party in the course of carrying out its responsibilities under this contract. Each Party shall presume all information

received from the other Party or to which it gains access pursuant to this contract is confidential. No confidential data collected, maintained, or used in the course of performance of the contract shall be disseminated except as authorized by law and with the written consent of the disclosing Party, either during the period of this Agreement or thereafter. The foregoing obligations shall not apply to confidential data or information lawfully in the receiving Party's possession prior to its acquisition from the disclosing Party; received in good faith from a third-party not subject to any confidentiality obligation to the disclosing Party; now is or later becomes publicly known through no breach of confidentiality obligation by the receiving Party; or is independently developed by the receiving Party without the use or benefit of the disclosing Party's confidential information.

INDEPENDENT CONTRACTOR: ULI shall act as an independent contractor and not an agent, partner, employee, or joint venturer with the Agency. All payments by the Agency shall be made on that basis and shall be without the withholding of any taxes. The Agency will not be responsible for any cost or expenses of operation of any kind associated with ULI's provision of services pursuant to this Agreement, except as set out herein. ULI shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services to be rendered hereunder except as set out herein. The parties hereto further agree that the Agency shall have no obligation to reimburse, pay directly or otherwise satisfy any expenses of ULI in connection with the performance of his obligations under this Agreement.

It is expressly understood and acknowledged by the parties hereto that the fees payable hereunder shall be paid in the gross amount, without reduction for any Federal or State withholding or other payroll taxes, or any other governmental taxes or charges. The parties hereto further recognize that ULI, as an independent contractor of the Agency, is responsible for directly assuming and remitting any applicable Federal or State withholding taxes, estimated tax payments, Social Security payments, unemployment compensation payments, and any other fees, taxes, and expenses whatsoever. In the event that ULI is deemed not to be an independent contractor by any local, state or federal governmental agency, ULI agrees to indemnify and hold harmless the Agency for any and all fees, costs and expenses, including, but not limited to, attorneys' fees incurred thereby.

INSURANCE:

ULI will purchase from insurance companies authorized to do business in Maryland and maintain during the entire term of this Contract, comprehensive general liability insurance, and workers' compensation insurance with limits of not less than those set forth below. On each policy, ULI will name the Agency as an additional insured, with the exception of the workers compensation insurance, and will provide an additional insured endorsement.

Comprehensive General Liability Insurance:

Personal injury liability insurance with a limit of \$2,000,000 each occurrence/aggregate;
Property damage liability insurance with limits of \$2,000,000 each occurrence/aggregate.

Workers' Compensation Insurance: ULI shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation insurance. ULI shall provide workers' compensation insurance meeting the statutory limits for Maryland and Employers' Liability limits of \$500,000. All corporations are required to provide Workers' Compensation Certificates of Insurance.

ULI covenants to maintain insurance, in these amounts, that will insure all activities undertaken by ULI on behalf of the Agency under this Agreement. The Agency shall receive 30 days prior notice of any reduction or elimination of the insurance coverage required herein.

Provision of any insurance required herein does not relieve ULI of any of the responsibilities or obligations assumed by the ULI in the contract awarded, or for which the ULI may be liable by law or otherwise. Provision of such insurance is not intended in any way to waive the Agency's immunities or any damage limits applicable to municipal government as provided by law.

The Contractor shall also furnish to the Agency a Certificate of Insurance and additional insured endorsement in like amounts for any approved sub-contractor prior to commencement of work in the Agency.

A Certificate of Insurance for all required coverages shall be provided to the Agency by the ULI within ten (10) days after the full execution and delivery of the Contract and in any event prior to undertaking any work under this Contract. The Certificate shall demonstrate that the ULI has complied with the requirements of this section and be in a form reasonably acceptable to the Agency.

INDEMNIFICATION: To the fullest extent permitted by law, ULI shall defend, indemnify and hold the Agency, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising from the negligence or willful misconduct on the part of ULI, officers, directors, employees, subcontractors, or agents in connection with the performance of this Agreement. Notwithstanding the foregoing, ULI's aggregate liability for damages of any nature for claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind to the Agency shall be limited to the amount of the fee under this Agreement. This limitation is not intended to apply to third party claims. In no event will ULI be responsible to the Agency for incidental or consequential damages arising out of the services it provides under this Agreement.

GOVERNING LAW; VENUE; ATTORNEY'S FEES: This Agreement shall be interpreted in accordance with the laws of the District of Columbia, without regard to its conflict of laws principles. Any action brought to interpret or enforce any term of this Agreement shall be brought in a court of competent jurisdiction in the District of Columbia. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover all reasonable fees and costs incurred, including reasonable attorney's fees, as determined by the court.

ASSIGNMENT; AMENDMENT: Neither party may assign transfer this Agreement or any rights hereunder without the written consent of the other party. This Agreement may not be modified or altered except in writing signed by both parties hereto. Except to the extent expressly provided for in the termination paragraph above, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

ENTIRE AGREEMENT; CONSTRUCTION & CAPTIONS: This Agreement represents the entire understanding of the parties as to those matters contained herein, and supersedes and cancels any prior oral or written understanding or representations with respect to matters covered hereunder. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. The captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

NO WAIVER: None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

SEVERABILITY: In the event that a court of competent jurisdiction holds any provision of this Agreement to be invalid, such holding shall have no effect on the remaining provisions of this Agreement, and they shall continue in full force and effect to achieve the Agreement's stated objective.

EXHIBITS: The exhibits to this Agreement are incorporated by reference herein, and the Parties agree to comply with all of the terms and conditions set forth in such exhibits. To the extent that there is a conflict between an exhibit and this Agreement, the terms of this Agreement shall control.

COUNTERPARTS: This Agreement may be executed in one or more counterparts, each of which will be considered an original, and all of which taken together will constitute one and the same instrument and will be effective as of the Effective Date. The Parties may sign in writing or by electronic signature. An electronic signature will have the same effect as an original signature.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties by their authorized representatives have executed this Agreement effective as of the date first set forth above.

ULI Washington

Town of Kensington



Name

Name Matthew J. Hoffman

Executive Director
Title

Title Town Manager

Address:
2001 L Street, NW
Washington, DC 20036

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3710 Mitchell Street
Kensington, MD 20895

Email: Deborah.bilek@uli.org

Email: mjhoffman@tok.md.gov

EXHIBIT A

Summit Avenue Extension and Beyond: Strategies for Economic Development, Connectivity, and Mobility in Kensington's Town Center

The Town of Kensington has evolved from its origins as a garden suburb into an engaged and lively residential community with an economic hub consisting of restaurants, retail, and light industrial businesses. However, with the widening of Connecticut Avenue in 1957 prioritizing vehicular traffic, along with the railroad tracks bisecting the Town, Kensington has become increasingly fractured. This is a problem for physical connectivity, and it has isolated certain parts of the community, including the historically Black Ken-Gar neighborhood.

Connecticut Avenue (MD 185), with its six lanes of traffic cutting through the heart of Kensington, greatly limits access to the central business district from all points within the Town. The major intersections with Connecticut Avenue, namely Knowles Avenue (MD 547), Metropolitan Avenue (MD 192), University Boulevard (MD 193), Plyers Mill Road and Summit Avenue, present perennial challenges for traffic, safety, economic development, and alternative personal mobility options like walking, bicycling, and access to public transit.

There have been positive steps to address access and traffic concerns over the years. For instance, there was an effort to reimagine Connecticut Avenue as a Town Center (2012 Kensington and Vicinity Sector Plan). More recently, the 2022 Connecticut Avenue Corridor Pedestrian and Bicycling Access and Safety Study, supported by a Transportation Land-use Connections (TLC) grant from the Metropolitan Washington Council of Governments (MWCOG), along with the recently initiated Bicycling and Pedestrian Priority (BPPA) plan in cooperation with the Maryland Department of Transportation, State Highway Administration (MDOT-SHA), have established guidelines and recommendations to help improve and provide alternative personal mobility options within the corridor and into greater Montgomery County.

One of the main goals of the 2012 Kensington Sector Plan was the creation of a Town Center by diverting traffic flows via the Summit Avenue Extension project, which was originally conceived within the 1970 Kensington-Wheaton Master Plan to alleviate traffic congestion along Connecticut Avenue between Knowles Avenue and the split with University Boulevard. Currently within Montgomery County's five-year Capital Improvements Program (CIP) budget, with the final design scheduled to begin in FY 2028 and a projected completion date set for FY 2032, the Summit Avenue Extension project would extend Summit Avenue past its current terminus at Plyers Mill Road, and connect Summit Avenue to Connecticut Avenue, via Farragut Avenue.

The importance of this project is far beyond the potential traffic alleviation, as it will also establish new developable frontage, along with multimodal infrastructure to meet Montgomery County's Bicycle and Pedestrian Master Plans. However, the project also creates new challenges, mostly pertaining to pedestrian and bicycle safety, as the new Summit Avenue terminus at Connecticut Avenue, near the University Boulevard split, presents challenges for pedestrian movement and safety. In addition, the project would require the County to acquire several properties. The new road would also run immediately adjacent to Ken-Gar, generating an opportunity to create a greater connection between Ken-Gar and the Town of Kensington. However, this opportunity is not without concerns from Ken-Gar residents that require thoughtful review and analysis.

EXHIBIT A

While the Town believes that, if done thoughtfully, the anticipated benefits of the Summit Avenue Extension project far outweigh the concerns and potential costs, we are requesting that the Urban Land Institute conduct a Technical Assistance Panel (TAP) to help the Town understand the feasibility and reality of this project, considering its many challenges, as we look to reimagine and reshape the Connecticut Avenue corridor by addressing traffic congestion, improving pedestrian and bicycle access and safety, enhance connectivity within our community, and continue to expand our thriving business community. With this in mind, we would ask that the Panel help the Town in addressing the following questions:

1. Can the TAP help the Town develop a singular vision for future planning purposes by coalescing the recommendations and ideals within the 2012 Kensington and Vicinity Sector Plan, Thrive Montgomery 2050, Connecticut Avenue TLC Report, BPPA plan, along with the Bicycle and Pedestrian Master Plans, that balances the ideas and concerns of local residents, by addressing the following:
 - a. Traffic movement and alleviation in and around the Connecticut Avenue/University Boulevard/Summit Avenue Extension intersection (including innovative grid movements);
 - b. Pedestrian/bicycling access and safety and green public space creation (e.g., sidewalks and crosswalks, green space and plazas, stormwater management, and bike infrastructure);
 - c. Economic growth and infill in the wedge bordered by Connecticut Avenue to the east, the new Summit Avenue Extension to the west, and Plyers Mill Road to the south.
2. What are the benefits and drawbacks when comparing the needs concerning Traffic, Pedestrian/Bicycling Safety, and Economic Development? How should the Town assess and determine its priorities when considering improvements along the Connecticut Avenue corridor, specifically when identifying a preferred plan? What are the key tradeoffs between the options, and ultimately, which option best balances these tradeoffs (i.e., the 'preferred' option)? What are the barriers to implementing this 'preferred' option (e.g., is it technically and economically feasible)?
3. What are the financing mechanisms and associated timelines for Summit Avenue Extension and associated redevelopment created by the project, including but not limited to federal, state, and county funding and grant opportunities?
4. How can equity and affordable/attainable housing considerations be integrated into the above, particularly accounting for the historically Black Ken-Gar neighborhood?
5. Is there viability to relocating the Kensington Volunteer Fire Department (KVFD)'s Station 5 from its current location at 10620 Connecticut Avenue, to the block separating the split between Connecticut Avenue and University Boulevard, and configuring a traffic 'circle' bordered by University Avenue to the east, Connecticut Avenue to the west, and Perry Avenue to the north?
6. How can the proposed Summit Avenue Extension area be reimaged from its historical reputation as 'gasoline alley' and adapt as the county and the country move away from a fossil-fuel based transportation network?