

## **PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“Agreement”) is made effective as of \_\_\_\_\_, 20\_\_, by and between the City of Gallatin, Tennessee (“City”) and \_\_\_\_\_ (“Consultant”).

### **RECITALS:**

**WHEREAS**, City is a private act municipal corporation with authority to enter into contracts. City has complied with all purchasing policies and ordinances in procuring the services described hereunder.

**WHEREAS**, Consultant is a professional, skilled in the services described hereunder, and is available and willing to perform the services, as more fully described in this Agreement and attached exhibits.

**NOW, THEREFORE**, it is agreed between the parties as follows:

### **Section 1.**

**Description of Services.** Consultant shall provide the professional services as more fully outlined in the attached *Exhibit A* (the “Services”). In the event a conflict exists between this Agreement and any term in *Exhibit A*, the terms in this Agreement shall supersede *Exhibit A*.

### **Section 2.**

**Performance of Services.** The manner in which the Services are to be performed and the specific hours to be worked by the Consultant shall be determined by the Consultant. The City will rely on the Consultant to work as many hours as may be reasonably necessary to complete the Services in a timely and thorough manner, exercising professional due care.

### **Section 3.**

**Payment to Consultant.** In exchange for the services performed hereunder, City shall pay Consultant amounts specified in the attached *Exhibit A*, but in no event shall amounts due hereunder exceed \$\_\_\_\_\_ in any 12-month period.

### **Section 4.**

**Term/Termination.** The term of this Agreement shall begin upon execution of this Agreement by the City. This Agreement may be terminated by either party upon seven (7) days written notice in the event of failure to perform in accordance with the terms of this Agreement.

In the event of termination for fault, the Consultant shall be compensated for all Services satisfactorily performed and accepted by the City and costs incurred up to the effective date of termination for which Consultant has not been previously compensated.

Upon receipt of notice of termination from the City, the Consultant shall discontinue the Services unless otherwise directed and deliver to the City all data, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in the performance of the Services under this Agreement, whether completed or in process.

**Section 5.**

**Insurance.** The Consultant agrees to secure and maintain in full force and effect a policy of professional liability insurance in a minimum amount of \$1,000,000 providing coverage for any negligent acts, errors or omissions by Consultant made during the term of this Agreement. The Consultant shall furnish the City with a certificate of insurance showing that the Consultant has complied with this Article prior to beginning any work under this Agreement. Consultant and/or its insurer must provide thirty (30) days written notification of any material change in the coverage or limits or cancellation of the policy to the City.

**Section 6.**

**Workers' Compensation.** Consultant shall at its own expense keep in full force and effect during the term of this Agreement Statutory Workers' Compensation Insurance.

**Section 7.**

**Indemnification.** Consultant expressly agrees to indemnify and hold harmless City or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of any omission or act of commission by Consultant, or any of their employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against City, City will give notice thereof to Consultant.

**Section 8.**

**Standard of Care.** Consultant shall perform its services in accordance with the standard of professional care ordinarily exercised under similar circumstances by reputable members of its profession in the same locality at the time the services are provided.

**Section 9.**

**Assignment.** This Agreement shall not be assigned by Consultant without the written consent of the City.

**Section 10.**

**Subcontractors.** Consultant shall not subcontract any task it is to perform under the terms of this Agreement without prior written consent of City.

**Section 11.**

**Binding Effect.** This Agreement shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

**Section 12.**

**Ownership of Documents.** The parties hereto agree that the City shall retain ownership of all files, summaries, other documents of the Consultant furnished hereunder. The Consultant will be permitted to retain reproducible copies of files, summaries and other documents for its files, upon request.

**Section 13.**

**Time of the Essence.** Time is of the essence. If any condition, obligation, or duty is not timely made, tendered or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper. If the non-defaulting party elects to treat this Agreement as being in full force and effect, the non-defaulting party shall have the right to an action for specific performance or damages or both.

**Section 14.**

**Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed as follows:

**The City:** City of Gallatin  
132 West Main Street, Room \_\_\_\_\_  
Gallatin, Tennessee 37066  
Attention: \_\_\_\_\_

**The Consultant:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

All notices shall be effective upon (i) receipt of the party to which notice is given, or (ii) on the fifth (5th) day following mailing, whichever occurs first.

**Section 15.**

**Exhibits.** All exhibits referred to in this Agreement are, by reference, incorporated herein for all purposes.

**Section 16.**

**Delays.** Any delays in or failure of performance by any party of his or its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages

of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

**Section 17.**

**Additional Documents.** The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

**Section 18.**

**Waiver.** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

**Section 19.**

**Governing Law; Jurisdiction; Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Tennessee without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit or proceeding (collectively, "the claim") between the City (and/or any other or department of the State of Tennessee) and the Consultant that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Sumner County for the State of Tennessee. If, however, the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Middle Tennessee filed in Davidson County, Tennessee. Consultant, by the signature herein of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts. In no event shall this section be construed as a waiver by City of any form of defense or immunity, based on the Eleventh Amendment to the United States Constitution, or otherwise, from any claim or from the jurisdiction.

**Section 20.**

**No Third Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to City and Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than City or Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**Section 21.**

**Appropriation and Availability of Funds.** This Agreement is subject to the appropriation and availability of funds. In the event that the funds are not appropriated or are otherwise unavailable, City reserves the right to terminate the Agreement upon thirty (30) days written notice to Consultant. Said termination shall not be deemed a breach of agreement by City. Upon receipt of the written notice, Consultant shall cease all work associated with the Agreement. Should such an event occur, Consultant shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, Consultant shall have no right to recover from City any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

**Section 22.**

**No Agency Relationship.** The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

**Section 23.**

**Tennessee Government Tort Liability Act.** City, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, *et seq.*, and all other applicable laws.

**Section 24.**

**Discrimination Prohibited.** Consultant hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this contract or in the employment practices of the Consultant on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. Consultant shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination. Consultant agrees to insert a similar provision in all subcontracts, if any.

**Section 25.**

**Title VI.** Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. Consultant shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

**Section 26.**

**Americans with Disabilities Act.** Consultant will comply with all the requirements as imposed by the Americans with Disabilities Act of 1990 and the regulations of the federal government issued thereunder.

**Section 27.**

**Conflicts of Interest Prohibited.** Consultant warrants that no amount shall be paid directly or indirectly to an employee or official of the City or State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to Consultant in connection with any work contemplated or performed relative to this Agreement.

**Section 28.**

**Lobbying.** Consultant certifies that to the best of its knowledge and belief:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. Consultant shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**Section 29.**

**Boycott of Israel.** Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-127.

**Section 30.**

**Entire Agreement.** This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

**CITY OF GALLATIN, TENNESSEE:**

**CONSULTANT:**

\_\_\_\_\_  
Paige Brown  
Mayor for the City of Gallatin, Tennessee

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Connie Kittrell  
City Recorder

**APPROVED AS TO FORM:**

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Susan High-McAuley  
City Attorney