

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN TOWN OF NOLENSVILLE, TENNESSEE
AND JAMES DUNCAN AND ASSOCIATES, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the Town of Nolensville, a Tennessee municipality (“Town”), and James Duncan and Associates, Inc., a Texas S Corporation doing business as Duncan Associates (“Consultant”).

WHEREAS, Town has determined that it requires professional services to prepare an impact fee study; and

WHEREAS, Consultant is qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees;

WHEREAS, Consultant is willing to perform such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, Town and Consultant agree as follows:

1. DEFINITIONS

“Scope of Services”: Such professional services as are set forth in Exhibit A attached hereto and incorporated herein by reference.

“Commencement Date”: The date notice to proceed is provided by Town to Consultant following contract execution and delivery of executed agreement to Consultant.

2. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire upon completion of the Scope of Services unless extended by written agreement of the parties or terminated earlier in accordance with Section 14 (“Termination”) below. Consultant understands and agrees that the timely completion of these tasks is an important and material condition of this Agreement.

3. CONSULTANT’S SERVICES

Consultant shall perform the services identified in the Scope of Services. Town shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

Consultant shall perform all work to the highest professional standards of Consultant’s profession. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of the Town Municipal Code.

Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

Clancy Mullen shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without Town's prior written consent.

4. COMPENSATION

Town agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payments pursuant to Exhibit B .

In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Seven Thousand Five Hundred Dollars (\$7,500) unless specifically approved in advance and in writing by Town.

5. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of Town without restriction or limitation upon its use or dissemination by Town. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

6. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to Town, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of Town or otherwise to act on behalf of Town as an agent. Neither Town nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of Town.

7. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by Town. Town shall grant such consent if disclosure is legally required. Upon request, all Town data shall be returned to Town upon the termination or expiration of this Agreement.

8. INDEMNIFICATION

The parties agree that Town, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the Town with the fullest protection possible under the law. Consultant acknowledges that Town would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect Town as set forth herein.

To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend Town, its officers, agents, employees and volunteers from and against any and all claims and

losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of Town's choice.

Town does not waive any immunities, defenses or tort liability limits that it may possess under the Tennessee Governmental Tort Liability Act or other law.

9. INSURANCE

During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:

Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.

Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.

Worker's Compensation Insurance as required by the laws of the State of Tennessee.

Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).

Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of Tennessee and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.

Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, Town may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

At all times during the term of this Agreement, Consultant shall maintain on file with the Town a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the Town and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with the Town such certificate(s).

Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.

The General Liability Policy of insurance required by this Agreement shall contain an endorsement naming Town and its officers, employees, agents and volunteers as additional insureds. The

General Liability Policy required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to Town. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

The insurance provided by Consultant shall be primary to any coverage available to Town. Any insurance or self-insurance maintained by Town and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the Town.

Any deductibles or self-insured retentions must be declared to and approved by the Town. At the option of Town, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to Town, or Consultant shall procure a bond or other security guaranteeing payment of losses and expenses.

Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

10. MUTUAL COOPERATION

Town shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

In the event any claim or action is brought against Town relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that Town may require.

It is agreed that all claims, disputes, or other matters in question arising out of or related to this Agreement shall be submitted to nonbinding mediation before any legal proceeding is commenced. The parties shall equally bear the fees and expenses charged by the mediator.

11. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. Town shall have the right to access and examine such records during normal business hours, without charge, or to request copies of such records at its expense.

12. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary in the performance of this Agreement. This includes, but shall not be limited to, encroachment permits and building and safety permits and inspections.

13. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, email or overnight courier service during Consultant's and Town's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to the Town:

Donald Anthony, Town Administrator
Town of Nolensville, Tennessee
7218 Nolensville Rd
Nolensville, TN 37135
danthony@nolensvilletn.gov

If to the Consultant:

Clancy Mullen, President
17409 Rush Pea Circle
Austin, TX 78738
clancy@duncanassociates.com

14. TERMINATION

Town shall have the right to terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on sixty calendar days' written notice to Town. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All Town data, documents, objects, materials or other tangible things shall be returned to Town upon the termination or expiration of this Agreement.

If Town terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

15. GENERAL PROVISIONS

15.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without Town's prior written consent, and any attempt to do so shall be void and of no effect. Town shall not be obligated or liable under this Agreement to any party other than Consultant.

15.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.

15.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it

appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neutral form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

15.4 The waiver by Town or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by Town or Consultant unless in writing.

15.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence that such failure was due to causes beyond the control and without the fault or negligence of Consultant.

15.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Rutherford County, Tennessee.

15.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

15.8 This Agreement shall be governed and construed in accordance with the laws of the State of Tennessee.

15.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between Town and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by Town and Consultant.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“Town”
Town of Nolensville, TN

“Consultant”
James Duncan and Associates, Inc.

By: _____

By: _____

Clancy Mullen, President

Date: _____

Date: _____

Approved as to form:

By: _____

Town Attorney

Date: _____

DRAFT

EXHIBIT A SCOPE OF SERVICES

Task 1: Impact Fee Study Update

Consultant will update the Road Impact Fee Update prepared for the Town of Nolensville in January 2017 to incorporate newer data on travel demand factors from the Institute of Transportation Engineers *Trip Generation Manual*, 10th edition, 2017, the 2017 National Household Travel Survey and other relevant sources, adjust the road improvement costs from the *Nolensville Major Thoroughfare Plan* adopted in August 2016 by the change in the *Engineering News-Record* Construction Cost Index, update the Town's historical impact fee revenue collections, and update the comparative fees charged by the nearby municipalities of Franklin, Brentwood, Smyrna and La Vergne. To assist in this effort, the Town will provide data on recent revenue collections. The updated report will be provided within two weeks of receipt of the notice to proceed. If warranted, a revised report will be provided to address Town comments.

Deliverables: *Initial Update Study*
 Final Update Study (if warranted)
 Supporting Spreadsheets

**EXHIBIT B
TIME SCHEDULE AND BUDGET**

Project Schedule

The initial draft of the impact fee study update will be provided within two weeks of notice to proceed. Following a week for staff review, a revised report will be provided if warranted within four weeks of receipt of the notice to proceed.

Project Budget

We propose to perform the task outlined in the Scope of Services for a fixed fee of \$7,500. The Town will be billed upon task completion.

Task	Amount
1. Impact Fee Study Update	\$7,500
Total	\$7,500

Additional services would be provided as negotiated or on an hourly basis. Duncan Associates' standard rate is \$175 per hour.