

**TOWN OF THOMPSON'S STATION, TENNESSEE
MASTER PROFESSIONAL SERVICES AGREEMENT
CODES PLAN REVIEWS AND INSPECTIONS
Contract No. 2023-_____**

THIS MASTER PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the Town of Thompson's Station, Tennessee, (hereinafter referred to as the "Town"), and _____ (hereinafter referred to as "Consultant"), who mutually agrees as follows:

DECLARATIONS. The Town desires to retain Consultant to provide professional services in connection with the Town's building codes plan review and inspections services on-call contract hereinafter referenced as the Project. The Project is described as follows:

Building Codes Plan Review and Inspections Services On-Call Contract

1. SCOPE OF SERVICES. Consultant shall provide building plan review and/or inspections services for the Project in accordance with the Scope of Services ("Services") as found in Attachment A, which shall be considered as an integral part hereof.
2. Consultant shall submit as part of Attachment A an individual Fee Schedule and a Standard Operating Procedures Process based on the detailed Scope of Services.
3. In the event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicts terms and conditions.
4. Consultants shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A in accordance with 2004-001

The Board of Mayor and Aldermen approved this master agreement on the _____ day of _____ 20__.

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

ARTICLE 1. SERVICES. Consultant will:

- 1.1 Act for the Town in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry.
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the Town.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Designate, in writing, the sole Project representative to coordinate with the Town all Services to be provided, including all contact information.
- 1.5 Unless provided for in the Project Scope of Services (Attachment A), Consultant shall perform all Services with his/her own forces (employees). Should sub-consultants be proposed to be used in the Project, a listing of said sub-consultants with Services to be performed shall be provided. After approval of this Agreement, so substitute for sub-consultants shall be allowed unless approved by the Town.
- 1.6 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work. During this period, the records shall be available for review by the Town at all reasonable times.

ARTICLE 2. TOWN RESPONSIBILITIES. The Town will:

- 2.1 Provide Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the Town.
- 2.2 Furnish Right-of-Way onto the Project site for the Consultant's necessary field studies and surveys. Consultant will endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs, and expenses, including reasonable attorneys' fees, for failure to make sure restoration.
- 2.3 Designate, in writing, the sole Project Manager to coordinate with and direct the Consultant, including all contact information.
- 2.4 Guarantee to Consultant that it has the legal capacity to enter into this contract and that sufficient monies are available to fund Consultant's compensation.

ARTICLE 3. GENERAL CONDITIONS.

- 3.1 Consultant, by the performance of services covered hereunder, does not in any way assume, abridge, or abrogate any of those duties, responsibilities, or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 Consultant shall be responsible for the acts or omissions of any party for which the Consultant is legally responsible who is involved in concurrent or subsequent phases of the Project action upon written instruction issued Consultant.
- 3.3 Neither the Town nor Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party.
- 3.4 ALLOCATION OF RISK AND LIABILITY; GENERAL. Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the

Project, and Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the Town and Consultant agree to allocate and limit such liabilities in accordance with this Article.

3.5 INDEMNIFICATION. Consultant agrees to indemnify and hold the Town harmless from and against legal liability for all claims, judgements, losses, damages, and expenses to the extent such claims, judgements, losses, damages, or expenses are caused by the joint or concurrent negligence of Consultant and the Town, they shall be borne by each party in proportion to its own negligence.

3.5.1 SURVIVAL. The terms and conditions of this paragraph shall survive completion of this services agreement.

3.6 LIMITATIONS OF RESPONSIBILITY. Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, Scope of Services; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to the Town or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to Consultant in Attachment A, Scope of Services.

ARTICLE 4. TERMINATION BY THE TOWN. The Town may terminate this Agreement in accordance with the following terms and conditions:

4.1 Termination for Convenience. The Town may, when in the interests of the Town, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the Town. The Town shall give written notice of such termination to Consultant specifying when termination becomes effective. Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and Consultant shall stop work when such termination becomes effective. Consultant shall transfer title and deliver to the Town such completed or partially completed work and materials, equipment, parts, fixtures, information, and Contract rights as the Consultant has in its possession or control. When terminated for convenience, Consultant shall be compensated, as follows:

(1) Consultant shall submit a termination claim to the Town specifying the amounts due because of the termination for convenience together with costs, pricing, or other dated required by the Town.

(2) The Town and Consultant may agree to compensation, if any, due to the Consultant hereunder.

(3) Absent agreement to the amount due to Consultant, the Town shall pay Consultant the following amounts:

(a) Contract costs for labor, materials, equipment, and other services accepted under this Agreement.

(b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if

it reasonably appears that Consultant would not have profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any.

The total sum to be paid to Consultant under this Section shall not exceed the Agreement Price, as properly adjusted, reduced by the amounts of payments otherwise made, and shall in no event included duplication of payment.

- 4.2 Termination for Cause. If Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or property equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Agreement, then the Town, in addition to any other rights it may have against Consultant or others, may terminate the performance of Consultant, in whole or in part at the Town's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, Consultant shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the Town of completing the work, including all costs and expenses of every nature incurred, has been deducted by the Town, such remainder shall belong to the Consultant. Otherwise, Consultant shall pay and make whole the Town for such cost. This obligation shall survive the termination of the Agreement.

In the event the employment of Consultant is terminated by the Town for cause pursuant to this Section, and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Section and the provisions of Section 4.1 shall apply.

- 4.3 Termination for Non-Appropriation. The Town may also terminate this Agreement, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of funds, and such termination shall be on the Terms of Section 4.1.
- 4.4 The Towns rights under this Section shall be in addition to those contained elsewhere herein or as provided by law.

ARTICLE 5. SCOPE OF SERVICES. Consultant shall provide the Services as described in Attachment A Scope of Services.

- 5.1 By mutual agreement, this Agreement and scope can be amended by the parties. The scope and fee for any additional tasks or services under such amendment shall be mutually negotiated and agreed to in writing prior to beginning such additional tasks or services.
- 5.2 ENVIRONMENTAL RESPONSIBILITY. Where drilling/sampling services are involved, these samples obtained from the Project site are the property of the Town. Should any of these samples be recognized by Consultant to be contaminated, the Town shall remove them from Consultant's custody and transport them to a disposal facility, all in accordance with applicable government statutes and regulations. For all other samples, Consultant shall retain them for a sixty (60) day period following the submission of the drilling/sampling report unless the Town otherwise directs;

thereafter the Consultant shall discard the samples in accordance with all federal, state, and local laws and regulations. Any archeological relics found as part of any drilling/sampling services are the property of the Town.

ARTICLE 6. SCHEDULE.

- 6.1 TIME IS OF THE ESSENCE. The parties agree that time is of the essence with respect to the parties' performance of all provisions of the Agreement.
- 6.2 Before executing this Agreement, Consultant shall have prepared and submitted for approval to the Town a Milestone Schedule for completion of the Project that details various stages/tasks of the Services, as outlined in the Scope of Services. Consultant shall submit and obtain the Town's approval for any proposed changes to the logic, durations, sequences, or timing of tasks, as approved in the Completion Schedule.
- 6.3 FORCE MAJEURE. Neither part will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may, by written notice to the other, terminate the Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the federal or state government or any of their departments, agencies, or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.

ARTICLE 7. USE OF DOCUMENTS AND DATA.

- 7.1 All Documents, including, but not limited to reports, drawings, renderings, specifications, and computer software reviewed and prepared by Consultant pursuant to this Agreement are instruments of service in respect to the project. The Town shall retain ownership and property interest therein, whether or not the Project is completed.
 - 7.1.1 USE OF DATA SYSTEMS: The Town maintains all rights to data systems and data (including derivative or hidden data, such as metadata) created and used by Consultant through information supplied to the Consultant by the Town.
 - 7.1.2 DISCLOSURE OF DOCUMENTS/DATA. The Town may be required to disclose documents or data under federal or state law. The Town shall notify Consultant if a request for data or documents has been made and shall give Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. Consultant waives any right to confidentiality of any document, email, or file it fails to clearly mark on each page as confidential or proprietary. In exchange, Consultant agrees to indemnify, defend, and hold harmless the Town for any claims by third parties relating thereto or arising out of (i) the Town's failure to disclose such documents or information required to be disclosed by law, or (ii) the Town's release of documents as a result of the Town's reliance upon Consultant representation that materials supplied by Consultant (in full or redacted form) do not contain trade secrets or other proprietary

information, provided that the Town impleads Consultant and Consultant assumes control over that claim.

- 7.2 By execution of this Agreement, Consultant and any sub-consultant(s) grant the Town a royalty-free, perpetual, irrevocable, and assignable license to use any and all intellectual property interest Consultant or sub-consultant(s) possess to any drawings, renderings, details, specifications, documents, and other information created before each of their first involvement with the project and subsequently incorporated into the Project's documents. Town-furnished data that may be relied upon by Consultant is limited to the printed copies that are delivered to Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by the Town shall be used by Consultant only for the Project, as herein described. The Town's posting or publication of such documents created by Consultant for the Town shall constitute fair use and shall not constitute an infringement of Consultant's copyright, if any.
- 7.3 Documents that may be relied upon by the Town are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by Consultant to the Town are only for the convenience of the Town, unless delivery of the Project in electronic media format has been dictated in Attachment A, Scope of Services. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.
- 7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by the Town.
- 7.5 When transferring documents in electronic media format, Consultant makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, Consultant at the beginning of this project.
- 7.6 The Town may make and retain copies of Documents for information and reference in connection with use on the Project by the Town or the authorized representative. Such Documents are not intended or represented to be suitable for reuse by the Town or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, will be at the Town's sole risk without liability or legal exposure to Consultant or sub-consultant(s).
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern, unless the Town provides authorization and acceptance of the change in writing.
- 7.8 Any verification or adaptation of the Documents for extension of the Project or for any other project will entitle Consultant to further compensation at rates agreed upon by the Town and Consultant.

ARTICLE 8. INSURANCE.

- 8.1 During the performance of the Services under this Agreement, Consultant shall maintain the following minimum insurance:

- a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
 - c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
 - d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 Consultant shall add the Town an additional insured on all policies unless otherwise prohibited.
- 8.3 Consultant shall, upon execution of this Agreement, furnish the Town certificates of insurance, which shall include a provision that such insurance shall not be cancelled without at least thirty (30) days written notice to the Town.
- 8.4 No insurance, of whatever kind or type, is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. The Town agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as the Towns deems adequate to indemnify the Town, Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with the Project requirements.

ARTICLE 9. PAYMENT.

- 9.1 The Town will pay Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope of Services, through a pass through as established in Ordinance 2004-001. Consultant's invoices will be presented at the completion of the work or monthly, as agreed to at the Project Kickoff. Invoices shall be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. The Town shall give prompt written notice of any disputed amount and shall pay the remaining amount.
- 9.2 Consultant shall be paid in full for all services under this Agreement, including Town authorized overruns of the Project budget or unforeseen need for Consultant's services exceeding the original Scope of Services.

ARTICLE 10. MISCELLANEOUS PROVISIONS.

- 10.1 EQUAL EMPLOYMENT OPPORTUNITY. In connection with this Agreement and the Project, the Town and Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability, or marital status. The Town and Consultant will take affirmative action to ensure that the contractor uses for the Project does not discriminate against any employee and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability, or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rate of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.1.1 Consultant shall insert the foregoing provision in all contracts relating to this Project.

- 10.2 TITLE VI – CIVIL RIGHTS ACT OF 1969. The Town and Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1946 (45U.S.C. 2000d), 49 C.F.R., Part 21, and related statues and regulations.
10.2.1 Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.3 NO THIRD-PARTY RIGHTS CREATED. Town and Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives, and, in the case of a partnership, its partners, to the other party to this Agreement and to their successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement. The Services provided for in this Agreement are for the sole use and benefit of the Town and Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Town and Consultant.
- 10.4 WARRANTIES/LIMITATION OF LIABILITY WAIVER. Town reserves all rights afforded to local governments under law for all general and implies warranties. The Town does not waive any rights it may have to all remedies provided by law and therefore any attempt by Consultant to limit its liability shall be void and unenforceable.

ARTICLE 11. EXTENT OF AGREEMENT.

- 11.1 APPLICABLE LAW/CHOICE OF FORUM AND VENUE. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to the state’s choice of law rules. The parties’ choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.
- 11.2 ENTIRE AGREEMENT. This Agreement, including these terms and conditions, represent the entire Agreement between the Town and Consultants for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only be written instrument signed by the Town and Consultant.

ARTICLE 12. DISPUTE RESOLUTION, BREACH.

- 12.1 If a dispute should arise relating to the performance of or payment for the Services under this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable timeframe after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to this Agreement. No arbitration or mediation shall be binding.
- 12.2 BREACH. Upon deliberate breach of the Agreement by either party, the non-breaching party shall be entitled to terminate the Agreement with notice, with all remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

ARTICLE 13. SURVIVAL.

The provisions contained in this Professional Services shall survive the completion of or any termination of the Agreement, contract, or other document to which it may accompany or

incorporate by reference or which subsequently may be modified, unless expressly excepted from this Article upon consent of both parties.

BY: _____

Brian Stover

Mayor

Date: _____

APPROVED AS TO FORM:

Town Attorney

Consultant Signature Page

BY: _____
Consultant's Signature
Title: _____
Date: _____

BY: _____
Ken McLawhon
Town Administrator
Date: _____