

PROFESSIONAL CONSULTING SERVICES AGREEMENT

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

THIS AGREEMENT, entered into this _____ day of _____, 20____ and effective

Immediately between _____ (hereinafter called the "CONSULTANT") and the City of Georgetown, a duly organized and validly existing politic body of the State of South Carolina (hereinafter called "CITY"),

WITNESSETH THAT

WHEREAS, The CITY desires to engage the services of a professional consultant for the purpose of _____, hereinafter referred to as "Project"; and,

WHEREAS, The CITY has solicited proposals for same by that certain Request for Proposal for Consulting Services, hereinafter referred to as "RFP", a copy of which is attached hereto for all purposes as **EXHIBIT "1"**; and,

WHEREAS, The CONSULTANT has represented to CITY that it has the qualifications, experience, expertise, training, and personnel to timely perform the Project for the CITY; and,

WHEREAS, The CONSULTANT has expressed its desire to do so by their proposal, dated _____, hereinafter referred to as "Proposal", a copy of which is attached hereto for all purposes as **EXHIBIT "2"**; and,

WHEREAS, the parties desire to enter in an agreement for the Consultant to perform the Project for CITY per all the terms and conditions more particularly set out herein below;

NOW, THEREFORE, for and in consideration of the foregoing, and of other good and valuable consideration as described, the adequacy of which is acknowledged, the parties hereto agree as follows:

(1) **SCOPE OF SERVICES:**

- a. CONSULTANT hereby agrees to perform the tasks and services as outlined in the Scope of Work, which is part of the RFP.
- b. CITY may, from time to time, require changes in the WORK of the CONSULTANT to be performed hereunder. Such changes, which are mutually agreed upon by and between CITY and the CONSULTANT, shall be incorporated by written amendment to this Agreement.
- c. CONSULTANT is obligated to comply with applicable standards of normal professional architectural or engineering care in the performance of the services and covenants that the services will be performed in accordance with the specifications set forth in the statement of work. Written notice of non-conforming services must be promptly given by the CITY to CONSULTANT. CONSULTANT'S obligations arising from non-conforming services as set forth in this paragraph shall extend compliant with the applicable statute of limitations in the South Carolina Code of Laws, as amended. CONSULTANT hereby disclaims all other warranties both express and implied.

(2) **COMPENSATION:**

- a. CITY agrees to pay CONSULTANT a sum not-to-exceed:

dollars (\$ _____) in accordance with the Proposal, incorporated into this Agreement as Exhibit 2, and hereinafter referred to as "Compensation";
- b. CONSULTANT shall submit monthly invoices for work completed to CITY by the fifth day of the month following the month in which such work is done. Such invoices shall reference the contract number and shall be accompanied by a monthly progress report and/or any reasonably required supporting materials and/or data.
- c. CITY shall pay the CONSULTANT for such invoice within thirty (30) days thereafter, provided same has been reviewed and approved by CITY, which review shall be without undue delay.

- d. If CITY approves payment in an amount less than that submitted by CONSULTANT in the invoice, then the unpaid portion of such invoice shall be retained until approved by CITY, as set out herein; and the parties hereto shall work in good faith to resolve such discrepancy within five (5) days thereafter.
- e. COMPENSATION shall not be made for WORK which is not part of the original Scope of Services or is not amended in writing as set forth in Article 1b.
- f. In the event funds are not appropriated or become non-appropriated for an included fiscal year by CITY, it is agreed by the parties that this Agreement will become null and void and the CITY's obligations cannot extend beyond the date of non-appropriation.

(3) **SCHEDULE OF SERVICES:**

- a. The WORK to be performed by the CONSULTANT shall begin upon the date in the CITY's Notice to Proceed letter to the CONSULTANT, incorporated into this Agreement as **ATTACHMENT "A"**, and hereinafter referred to as "NTP"
- b. The WORK shall be completed in accordance with the Schedule, incorporated into this Agreement as **ATTACHMENT "B"**, and hereinafter referred to as "Schedule".
- c. Modifications to the SCHEDULE may be required. Such modifications, which are mutually agreed upon by and between CITY and the CONSULTANT shall be incorporated by written amendment to this Agreement.

(4) **PERSONNEL:**

- a. The CONSULTANT shall supply the necessary personnel required to perform the services under this Agreement. A list of key personnel supplied by the CONSULTANT under this Agreement are noted on the Personnel List, incorporated into this Agreement as **ATTACHMENT "C"**, and hereinafter referred to as "PERSONNEL LIST".
- b. The Personnel List shall include the name, title, and hourly billing rate of each entry on the list.

- c. All the services required hereunder will be performed by the CONSULTANT or under CONSULTANT'S supervision, and all personnel engaged in the work shall be qualified to perform such services.
- d. The CITY reserves the right to request the substitution of CONSULTANT'S personnel, whether listed or not listed in PERSONNEL, assigned to this Agreement.

(5) **INDEPENDENT CONTRACTOR**

- a. The CONSULTANT shall always be considered an independent contractor hereunder, and neither CONSULTANT nor its employees, agents or representatives shall, under any circumstances, be considered employees of CITY.
- b. The CITY shall not be legally responsible for negligence or other wrong-doing, either intentional or unintentional, by CONSULTANT or CONSULTANT's employees, agents, or representatives.
- c. The CITY shall not deduct from payment to CONSULTANT any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to CONSULTANT.
- d. The CITY shall not provide the CONSULTANT with any insurance coverage or other benefits, including Workers Compensation, normally provided by CITY for CITY's employees.

(6) **SERVICES AND MATERIALS TO BE FURNISHED BY CITY:**

- a. CITY shall furnish the CONSULTANT with any available information, data, and material pertinent to the execution of this Agreement.
- b. CITY shall cooperate with the CONSULTANT in carrying out the work herein and shall provide adequate staff for liaison with the CONSULTANT.

(7) **TERMINATION:**

- a. CITY may terminate this Agreement upon seven (7) days written notice to CONSULTANT for CONSULTANT's failure to provide services hereunder to CITY's sole reasonable satisfaction.
- b. CITY may terminate this Agreement for any reason as CITY in its sole discretion shall decide upon fifteen (15) days written notice to CONSULTANT.
- c. Termination of this Agreement shall not relieve either party of any obligation incurred one to the other prior to said termination. Specifically, CITY agrees to pay CONSULTANT for all work performed hereunder and all reasonable costs incurred prior to said termination.

(8) **FORCE MAJEURE:**

- a. Force majeure includes acts of God, acts of other branches of government in either their sovereign or contractual capacities, or any similar cause beyond the reasonable control of the parties.
- b. Any delays in or failure of performance by either party that are caused by a Force Majeure shall not constitute breach of this Agreement.
- c. In the event of force majeure, as herein defined occurs, both parties shall be entitled to a reasonable extension of time for performance of their WORK.

(9) **PERMITS, CERTIFICATES AND/OR LICENSES:**

- a. CONSULTANT shall comply with all applicable federal, state, county and City laws and ordinances, in effect as of the date of this agreement in the performance of its obligations hereunder.
- b. CONSULTANT shall procure and maintain all permits and license(s) required to perform the WORK, including any necessary business license(s).

(10) **NOTICES:**

- a. Any notices, bills, invoices, or reports required by this Agreement shall be sufficient if sent by the parties in the United States mail, postage paid to the addresses noted below:

CITY

City Administrator
c/o City Engineer
City of Georgetown
Post Office Box 939
Georgetown, SC 29440
Phone: (843) 545-4500

CONSULTANT

Address

Phone:

(11) **DOCUMENTS:**

- a. The CITY shall be deemed as the owner of all work produced under this Agreement, including but not limited to drawings, specifications, reports, field data, notes, and other documents whether handwritten, typed or in electronic form.
- b. The CITY may use, reuse, copy, distribute and disseminate any and all work produced under this Agreement and rely on the accuracy of the CONSULTANT, so long as the documents remain unaltered, and only for the purpose for which the work product was originally intended under this Agreement.
- c. The CITY may modify any and all work produced under this Agreement as it sees fit; however, any modification shall also relieve the CONSULTANT of responsibility as to the work product and/or any modification thereof.

(12) **INFORMATION OF REPORTS:**

- a. The CONSULTANT shall, at such time and in form as CITY may require, furnish such periodic reports concerning the status of the project, such statements, and copies of proposed and executed plans and other information relative to project as may be requested by CITY.

- b. The CONSULTANT shall furnish CITY, upon request, with copies of all documents and other material prepared or developed in relation to or as part of project.

(13) RECORDS AND INSPECTIONS:

- a. CONSULTANT shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of one year after the completion of the project.
- b. CITY shall have free access at all proper times to such records, and the right to examine and audit the same and to make transcripts there from, and to inspect all program data, documents, proceedings, and activities.

(14) INSURANCE:

- a. CONSULTANT shall procure and maintain insurance for the duration of this Agreement against any and all claims for injuries to persons or damages to property of third parties which may in any way arise from, or in connection with, the negligent performance of the work hereunder by CONSULTANT, its agents, representatives or employees.
- b. Such insurance shall contain a provision stating that coverage thereunder shall not be canceled or reduced without thirty (30) days prior written notice to CITY, and shall be in the following minimum amounts:

Minimum Coverages and Limits:

- | | | |
|----|------------------------------|---|
| a. | Commercial General Liability | \$1,000,000 per occurrence
\$2,000,000 aggregate |
| b. | Worker's Compensation | Statutory Limits |
| c. | Automobile Liability | \$1,000,000 per occurrence |
| d. | Professional Liability | \$1,000,000 per claim made |
- c. Certificates showing proof of such insurance shall be submitted to CITY prior to commencement of services under this Agreement.
 - d. The Commercial General Liability policy is to contain or be endorsed to name CITY, its officers, officials, agents and employees as additional insured as respects the liability arising out of the activities negligently performed under this Agreement. Such coverage shall be primary as to CONSULTANT'S negligence

and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- e. CONSULTANT shall maintain Workers Compensation Insurance for all of CONSULTANT's employees who are in any way connected with the performance under this Agreement. Such insurance shall comply with all applicable state laws and provide a waiver of subrogation against the CITY, its officers, officials, agents and employees.
- f. CONSULTANT and/or its insurers are responsible for payment of any liability arising out of Workers Compensation, unemployment or employee benefits offered to its employees.
- g. Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A: VII and authorized to do business in the State of South Carolina, unless otherwise approved by CITY.
- h. CONSULTANT shall not self-insure in satisfaction of any insurance requirement set out herein without the express, written approval of CITY.

(15) COMPLETENESS OF AGREEMENT:

- a. This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.
- b. This Agreement is entered into with full understanding and awareness of such requirement.
- c. CITY shall be allowed to rely upon the representations of CONSULTANT as set out in the Proposal.
- d. Except for the foregoing, this Agreement constitutes the entire agreement between the parties hereto and may not be modified or amended except in writing signed by both parties hereto.

(16) **CONFLICTS:**

- a. In the case of any conflict between the terms and conditions of this Agreement and the terms of any other agreement between the parties hereto, the terms of this Agreement shall control.
- b. If there is a conflict between the CONSULTANTS' Proposal and this Agreement, then this Agreement shall control.
- c. If there is a conflict between the CITY'S Request for Proposal and the CONSULTANT'S Proposal, the CITY'S RFP shall control.
- d. Both parties agree that all conflicts arising under this Agreement that cannot be settled between the parties shall be resolved in the Georgetown County Court of Common Pleas (Non-Jury).

(17) **SEVERABILITY:**

- a. If any part or provision of this Agreement is held invalid or unenforceable under applicable law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining parts and provisions of this Agreement.

(18) **NONWAIVER:**

- a. The waiver by CITY or CONSULTANT of a breach of this Agreement shall not operate as a waiver of any subsequent breach, and no delay in acting with regard to any breach of this Agreement shall be construed to be a waiver of the breach.
- b. In no event shall the making of any payment by CITY to the CONSULTANT constitute or be construed as a waiver by CITY of any breach of covenant, or any default which may exist on the part of the CONSULTANT.
- c. The making of any such payment by CITY while any such breach or default shall exist in no way impairs or prejudices any right or remedy available to CITY in respect to such breach or default.

(19) **GOVERNING LAW:**

- a. This Agreement and the rights, obligations, and remedies of the parties hereto, shall in all respects be governed by and construed in accordance with the laws of the State of South Carolina.

(20) **RESPONSIBILITY:**

- a. Each party shall be responsible for its own acts as provided under the law of South Carolina and will be responsible for all damages, costs, fees and expenses which arise out of the performance of this Agreement which are due to that party's own negligence, tortious acts and other unlawful conduct and the negligence, tortious action and other unlawful conduct of its respective agents, officers and employees.
- b. The foregoing notwithstanding, and excluding CONSULTANT'S liability for bodily injury or property damage of third parties, the total aggregate liability of CONSULTANT arising out of the performance or breach of this Agreement shall not exceed the greater of the compensation paid to CONSULTANT hereunder or \$500,000.00. Notwithstanding any other provision of this Agreement, neither party shall have liability to the other for contingent, consequential, or other indirect damages including, without limitation, damages for loss of use, revenue, or profit; operating costs and facility downtime, however the same may be caused. The limitations and exclusions of liability set forth herein shall apply regardless of the fault, breach of contract, tort (including negligence), strict liability or otherwise of the parties, including their respective employees, or sub consultants.

(21) **INDEMNIFICATION:**

- a. Notwithstanding anything herein to the contrary, CONSULTANT shall indemnify and hold CITY, its employees, officers, officials, and/or representatives, free and harmless from and against any and all liabilities, losses, claims, demands, suits,

judgments, causes of action and/or expenses, of any kind including, but not limited to the payment of reasonable attorney's fees, resulting from property damage and/or personal injury, including death, resulting from the negligence, errors, omissions, and/or willful misconduct of CONSULTANT, if any, arising out of the performance of its duties hereunder.

- b. Such losses, liabilities, expenses, damages and/or claims shall include, but not be limited to, civil or criminal fines or penalties, a taking, whether direct, indirect or inverse, or for loss of use and/or service, personal injury, death, libel, slander, and reasonable attorney's fees in the underlying action through all levels of appeals.
- c. Should CITY be named in any suit, action or claim under the terms hereof, then, to the extent of, and in proportion to, its indemnification obligation, CONSULTANT shall appear and defend CITY at CONSULTANT's cost and expense, provided that CITY shall always have the option to appear and defend such action or claim on its own behalf.
- d. The foregoing indemnity shall survive the expiration or termination of this Agreement.

(22) **FREEDOM OF INFORMATION ACT (FOIA)**

- a. The parties acknowledge that all documents are subject to release under the South Carolina Freedom of Information Act (FOIA) and will be released to the public unless exempt from disclosure under the FOIA.
- b. If CONSULTANT contends a document is exempt from disclosure under the FOIA, it shall mark any such documents plainly, and seek protection from disclosure by filing an appropriate action in Circuit Court and shall bear the cost of the action and any monetary or attorney's fees awarded to the person or entity making the FOIA request.
- c. If CONSULTANT objects to release and litigation is commenced against the CITY under the FOIA, CITY agrees to promptly notify CONSULTANT, who shall move to intervene as a party.

- d. CONSULTANT agrees to hold CITY harmless from and indemnify for all costs (including plaintiff's attorney's fees if awarded by the Court) incurred by the CITY in defending the lawsuit and the funds necessary to satisfy any judgment and all costs on appeal, if any.

(23) ASSIGNABILITY:

- a. The parties hereby agree that CONSULTANT may not assign, convey, or transfer its interest, rights and duties in this Agreement without the prior written consent of CITY.

(24) THIRD PARTY OBLIGATIONS:

- a. Neither party shall be obligated or liable to any party other than the second party to this Agreement.

(25) RESTRICTIONS ON LOBBYING:

- a. CONSULTANT shall comply with all requirements of Section 1352, Title 31 of the U.S. Code, which prohibits all recipients of federal funds from using appropriated monies for lobbying activities.

(26) SUCCESSORS AND ASSIGNS:

- a. The rights and obligations herein shall inure to and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, CITY and the CONSULTANT have executed this agreement as of the date first written above.

CITY OF GEORGETOWN

CONSULTANT

By: _____

By: _____

Title: City Administrator

Title: Principal/Owner