

RESOLUTION 20-170

A RESOLUTION TO APPROVE A PROFESSIONAL SERVICES AGREEMENT FOR VOLKERT TO UPDATE THE SPRING HILL BICYCLE AND GREENWAY PLAN

WHEREAS, the Bicycle and Greenway Plan was adopted by the City of Spring Hill Planning Commission on September 14, 2015 and subsequently amended by the Board of Mayor and Aldermen on October 19, 2015; and

WHEREAS, the City of Spring Hill desires to initiate an update to the adopted Bicycle and Greenway Plan and to retain professional planning services to advise city staff, the Parks and Recreation Commission, Planning Commission and Board of Mayor and Aldermen on various amendments to the Bicycle and Greenway Plan; and

WHEREAS, the Parks and Recreation Commission recommends an update to correct inconsistencies, update changes created by other roadway projects, re-evaluate certain routes, establish clear expectations, and reflect the amendments in the City's GIS mapping system; and

WHEREAS, the City of Spring Hill requested and received a proposal from Volkert, Inc., the consultant that prepared the current adopted Bicycle and Greenway Plan, to provide professional consultant services for the fee of \$8,950.00 attached hereto; and

NOW, THEREFORE, BE IT RESOLVED, that the Board of Mayor and Aldermen of the City of Spring Hill:

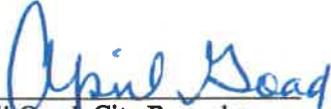
1. Approve the Professional Services Agreement attached hereto for Volkert, Inc. to provide professional consultant services to update the City of Spring Hill Bicycle and Greenway Plan for a lump sum fee in the amount of \$8,950.00.
2. Authorize the Mayor to execute the attached Professional Services Agreement.

Passed and adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee on this 16th day of November, 2020.



Rick Graham, Mayor

ATTEST:



April Goad, City Recorder

LEGAL FORM APPROVED:



Patrick Carter, City Attorney



REQUEST: Resolution 20-170 to approve a Professional Services Agreement with Volkert, Inc. to update the Spring Hill Bicycle and Greenway Plan

SUBMITTED BY: Alderman Jeff Graves

DATE: October 5, 2020

RE: Professional consultant services to assist with update to Spring Hill Bicycle and Greenway Plan

ATTACHMENTS: Resolution 20-170 and supporting documentation

PURPOSE:

To approve Resolution 20-170 to approve a Professional Services Agreement with Volkert, Inc. to provide professional consultant services to the update of the City of Spring Hill Bicycle and Greenway Plan.

BACKGROUND:

Since the adoption of the Bicycle and Greenway Plan in 2015, many changes have taken place throughout the City as a result of ongoing private development and city/state/federal roadway projects throughout the community. City staff has determined it would be prudent to not only update the Bicycle and Greenway Plan to reflect these projects, but to also identify and present for consideration other necessary amendments such as correcting inconsistencies, re-evaluating certain routes, establishing clear design/build expectations, and subsequently updating the City's GIS mapping to reflect bicycle and greenway systems throughout the community. Two attachments of notes made by the Parks and Recreation Director and the Planning Director of items that need to be addressed have been included with this packet.

Volkert, Inc. was retained by the City in 2015 to assist with preparation of the current Bicycle and Greenway Plan. To ensure sound and consistent planning practices are followed in the consideration of updates/amendments to the current plan, the City requested Volkert present a proposal for the desired professional consultant services. Volkert presented the City with a proposal and a Professional Services Agreement that contains a scope of work outlining consultant services during the review and adoption for a lump sum fixed fee in the amount of \$8,950. The Professional Services Agreement is attached to Resolution 20-170 and it utilizes the same contractual template utilized between the City and Volkert on other professional consultant services engagements.

The proposed updates/amendments will be submitted to the Parks and Recreation Commission and the Planning Commission and will include a public meeting in order to provide opportunities for public input prior to making their recommendations to BOMA for approval of plan amendments.

FINANCIAL IMPACT:

This is not a budgeted expense. In order to move forward with this project, a budget amendment will be required. A budget amendment has been presented for inclusion in the latest budget amendment that is under consideration by the Board on second and final reading. The budget amendment introduced for this project provides for a funding appropriation from the General Fund in the amount of \$8,950 that will cover the lump sum fee proposed in the Professional Services Agreement. If the Board approves the budget amendment as requested, sufficient funds will be available to cover the expense for this project as provided in the Professional Services Agreement for the lump sum fee amount of \$8,950.00."

RECOMMENDATION:

On September 23, 2020, the Parks and Recreation Commission reviewed the request and voted unanimously to favorably recommend Resolution 20-170. Staff favorably recommends approval of Resolution 20-170 to approve the Professional Services Agreement with Volkert, Inc. to provide professional consultant services for the update of the City of Spring Hill Bicycle and Greenway Plan for lump sum fee in the amount of \$8,950.00 and to authorize the Mayor to execute the agreement.

CITY OF SPRING HILL, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Spring Hill, Tennessee, hereinafter referenced as "City", and VOLKERT, INC., hereinafter referenced as "Consultant", who mutually agrees as follows:

DECLARATIONS. City desires to retain Consultant to provide professional services in connection with the City's project hereinafter referenced as Project. The Project is described as follows:

CONSULTANT'S Scope of Work hereunder is finite and limited to only those items explicitly stated or enumerated herein or attached hereto. Any work or services desired by CITY that are not stated herein or attached hereto shall be considered Extra Work and shall entitle CONSULTANT to mutually agreed-upon additional compensation. This Scope Of Services serves as Attachment A for this agreement.

The Consultant shall provide professional planning services for the City of Spring Hill. The tasks will include, but not be limited to:

Task 1

Review the Proposed list of recommended Bicycle and Greenway amendments provided by the City. These amendments will allow the Plan to more fully align with the UDC and to account for changes to both development and capital projects in the nearly 5 years since original adoption of the Plan.

Task 2

Provide a draft technical memorandum with the proposed responses to each recommended amendment for review by City Staff. Upon completion of the review by City Staff, make any necessary revisions and finalize the technical memorandum for consideration by the City Staff, Parks Commission, Planning Commission, and BOMA. As part of this task, Volkert will present the technical memorandum and its findings to the Parks Commission for their input and concurrence prior to forwarding the memorandum on to Planning Commission and BOMA. Volkert staff will attend all necessary meetings to address any questions.

Task 3

Revise the document and associated maps as necessary to reflect the proposed changes outlined in the Task 2 Technical Memorandum. Develop a draft revised document (including maps) for review by City Staff. Upon completion of the review by City Staff, make any necessary revisions and provide the Final Draft document for consideration by the City Staff, Parks Commission, Planning Commission, and BOMA. As part of this task, Volkert staff will attend up to two meetings each for the Parks Board, Planning Commission, and BOMA (six total meetings).

Task 4

Once the Technical Memorandum has been approved by the Planning Commission and BOMA that identifies all the various amendments to be made to the master plan document, revised GIS

files and an updated Bicycle and Greenway Plan will be presented to the City in a reproducible format.

Deliverables

- 1) Draft Technical Memorandum outlining the proposed response to each of the recommended amendments for review by City Staff.
- 2) Final Technical Memorandum outlining the proposed response to each of the recommended amendments.
- 3) Draft revised document for review by City Staff, Parks Commission, Planning Commission, and BOMA.
- 4) Final revised document to serve as a replacement to the current Bicycle and Greenway Plan.
- 5) Final GIS and PDF documents for use by the City of Spring Hill

Schedule

Volkert will complete the tasks within the following time periods:

Task 1 – within 1 week of Notice to Proceed.

Task 2 – within 3 weeks of Notice to Proceed.

Task 3 – within 12 weeks of Notice to Proceed or until BOMA approves of the final document.

Task 4 – within 16 weeks of Notice to Proceed.

The total lump sum fee for professional services set forth in this agreement shall be **eight thousand nine hundred fifty dollars (\$8,950.00)**.

Payment shall be made payable to Volkert, Inc. and submitted to the following address: **Dept. #2042, Volkert, Inc., P.O. Box 11407, Birmingham, AL 35246-2042**

BY: _____

Brad Thompson

Title: Vice President

Date: _____

11/17/20

BY: _____

Rick Graham

Mayor

Date: _____

11/16/2020

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

ARTICLE 1. SERVICES. Consultant will:

1.1 Act for City 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 City.

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 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 City at all reasonable times.

ARTICLE 2. CITY'S RESPONSIBILITIES. City, or its authorized representative, will:

2.1 Provide Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the City.

2.2 Furnish right-of-entry onto the Project site for 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 such restoration.

2.3 Designate, in writing, the sole Project representative 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 involved in concurrent or subsequent phases of the Project acting upon written instruction issued by the Consultant.

3.3 Neither City nor Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party. However, nothing in this Article shall prevent Consultant from engaging independent consultants, associates, and subcontractors to assist in the performance of the Services at Consultant's cost.

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

3.5 INDEMNIFICATION. Consultant agrees to indemnify and hold City harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by Consultant's negligent act, error or omission in the performance of the services of this Agreement. In the event judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of Consultant and City, 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 service 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 City 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 CITY. The City may terminate this Agreement in accordance with the following terms and conditions:

4.1 Termination for Convenience. The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The 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 the Consultant shall stop work when such termination becomes effective. The Consultant shall also terminate outstanding orders and subcontracts for the affected work. The Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City 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, the Consultant shall be compensated as follows:

(1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.

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

(3) Absent agreement to the amount due to the Consultant, the City shall pay the 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 the 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 the Consultant would have not 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 the Consultant under this Section shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

4.2 Termination for Cause. If the Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper 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 City, in addition to any other rights it may have against the Consultant or others, may terminate the performance of the Consultant, in whole or in part, at the City's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, the 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 City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Consultant. Otherwise, the Consultant shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Agreement.

In the event the employment of the Consultant is terminated by the City 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 City 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 such funds, and such termination shall be on the terms of Section 4.1.

4.4 The City's rights under this Section shall be in addition to those contained elsewhere herein or provided by law.

ARTICLE 5. SCOPE OF SERVICES. Consultant shall provide the Services as described on Page 1 of this agreement.

5.1 By mutual agreement, this contract 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, the samples obtained from the Project site are the property of the City. Should any of these samples be recognized by the Consultant to be contaminated, the City shall remove them from the Consultant's custody and transport them to a disposal site, all in accordance with applicable government statutes, ordinances, and regulations. For all other samples, the Consultant shall retain them for a sixty (60)-day period following the submission of the drilling/sampling report unless the City directs otherwise; thereafter, the Consultant shall discard the samples in accordance with all federal, state and local laws.

ARTICLE 6. SCHEDULE.

6.1 **TIME 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 **FORCE MAJEURE.** Neither party 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 this 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 government of the United States or of the State 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.

6.3 Should City request changes in the scope, extent, or character of the Project, the time of performance of Consultant's services as indicated in Attachment A shall be adjusted equitably.

ARTICLE 7. USE OF DOCUMENTS AND DATA.

7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by Consultant pursuant to this Agreement are instruments of service with respect to the Project. Consultant shall retain an ownership and property interest therein (including the right of reuse, at the discretion of the Consultant) whether or not the Project is completed.

7.1.1 **USE OF DATA SYSTEMS:** Ownership, property interests and proprietary rights in data systems used by Consultant do not extend to the data created by or supplied to

Consultant by the City; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation.

7.1.2 DISCLOSURE OF DOCUMENTS AND DATA. City may be required to disclose documents or data under state or federal law. City 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, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, Consultant agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Consultant representation that materials supplied by Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Consultant and Consultant assumes control over that claim.

7.2 City -furnished data that may be relied upon by Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by City shall be used by Consultant only for the Project as described herein. City's posting or publication of such documents created by Consultant for City 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 City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by Consultant to City are only for convenience of City, unless the 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 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 City.

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 City may make and retain copies of documents for information and reference in connection with use on the Project by the City, or their authorized representative. Such documents are not intended or represented to be suitable for reuse by City 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 City's sole risk and without liability or legal exposure to the Consultant or to Consultant's consultants.

7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

7.8 Any verification or adaptation of the documents for extensions of the Project or for any other project will entitle Consultant to further compensation at rates to be agreed upon by City 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 City an additional insured on all policies unless otherwise prohibited.

8.3 Consultant shall, upon execution of this Agreement, furnish City certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty (30) days' written notice to City.

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 its activities in the execution of the Project. City 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 City deems adequate to indemnify City, Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

ARTICLE 9. PAYMENT.

9.1 City 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. Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. City 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 City-authorized overruns of the Project budget or unforeseen need for Consultant's services exceeding the original Scope Of Services.

9.3 TRAVEL EXPENSES. The City shall reimburse reasonable expenses, including travel and meals, when specified in the Scope Of Services, but only in accordance with the City's Travel and Expense Policy and Procedures Manual. The maximum amount will be applied as of the date of travel and as listed in the per diem reimbursement rates on the "CONUS" website developed by the United States General Services Administration, located at www.gsa.gov [click on 'per diem rates' under the 'etools' category].

ARTICLE 10. MISCELLANEOUS PROVISIONS

10.1 EQUAL EMPLOYMENT OPPORTUNITY. In connection with this Agreement and the Project, the City and the Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. The City and Consultant will take affirmative action to ensure that any contractor used for the Project does not discriminate against any employee and 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, rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10.1.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.

10.2 TITLE VI - CIVIL RIGHTS ACT OF 1964. The City and the 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.

10.2.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.

10.3 NO THIRD PARTY RIGHTS CREATED. City 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 its 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 City and Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

10.4 WARRANTIES/LIMITATION OF LIABILITY/WAIVER. The City reserves all rights afforded to local governments under law for all general and implied warranties. The City 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 that state's choice of law rules. The parties' choice of forum and venue shall be in the courts of Maury County or Williamson County, Tennessee based on the location of the project. If the Project provides services that cover the whole City or the services are not tied to a physical location, then the choice of forum and venue shall be in the courts of Maury 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 City and Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by City and Consultant.

ARTICLE 12. DISPUTE RESOLUTION. 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 time 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 the Agreement. No arbitration or mediation shall be binding.

12.1 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 of the 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 Agreement shall survive the completion of or any termination of the Agreement, agreement 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.