

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, entered into as of this _____ day of _____, _____, by and between _____, (hereinafter referred to as the "Consultant") and the City of Decatur, Georgia (hereinafter referred to as the "City").

WITNESSETH THAT:

WHEREAS, the City desires to engage the Consultant to render certain technical or professional services hereinafter described in connection with

(hereinafter referred to as the "Project"); and

WHEREAS, the Consultant desires to render such services in connection with the Project.

NOW THEREFORE, in consideration of the premises, and the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. Employment of the Consultant. The City hereby agrees to engage the Consultant and the Consultant hereby agrees to perform the services hereinafter set forth in accordance with the terms and conditions contained herein.

2. Scope of Services. Consultant shall do, perform and carry out in a satisfactory and proper manner, as determined by the City Manager or his/her authorized agent (as used herein the City Manager's "authorized agent" shall mean that person designated by the City Manager in writing to the person executing this contract on behalf of the Consultant), the work and services described in Attachment "A" which is attached hereto and made a part hereof.

3. Time of Performance. The services of the Consultant are to commence no later than seven (7) days after the execution of this contract and shall be undertaken and pursued in such sequence as to assure their expeditious completion and as may be required in Attachment "A". All services required hereunder shall be completed on or before _____. Provided, however, that Consultant shall not be responsible for any delays caused by the City, the City's Consultants, or circumstances beyond the Consultant's control.

4. Compensation and Method of Payment. The Consultant shall be compensated for the work and services to be performed under this contract as set forth in Attachment "B" which is attached hereto and made a part hereof. In no event however, will the total compensation to be paid the Consultant under this contract exceed the sum of _____ (excluding such costs as printing and reproduction costs, courier costs, travel and similar costs).

5. Progress Payments. Unless otherwise provided in Attachment "B", the Consultant shall be entitled to receive progress payments on the following basis: As of the last day of each calendar month during the existence of this contract, the Consultant shall submit to the City an invoice for payment based on the percentage of completion of the Project through the invoice period. Subject to the City's right to verify the accuracy of the invoice and the satisfactory performance of the work evidenced thereby, the City will make payments to the Consultant as the work progresses but not more often than once a month. Invoices must cover a period ending with the end of a month and must be received within five (5) days following the end of the invoice period. The Consultant will be paid an amount which bears the same ratio to the total compensation to be paid to the Consultant under this contract as the work and services

actually performed as of the end of the invoice period bear to the total work and services to be performed by the Consultant under this contract, less all previous progress payments made pursuant hereto. Upon completion and acceptance by the City of the work, including the receipt of any final written submission of the Consultant, the City shall pay the Consultant a sum equal to one hundred per cent (100%) of the compensation to be paid under this contract, less the total of all previous payments made.

6. Consultant's Personnel. Consultant represents that it has, or will secure at it's own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of the City nor shall such personnel have been employees of the City during any time within the twelve-month period immediately prior to the date of this contract, except with the express prior written consent of the City Manager or his/her authorized agent. Further, Consultant agrees that no such personnel shall be involved in any way with the performance of this contract, without the express prior written approval of the City Manager or his/her authorized agent.

7. Approval of Subcontracts. None of the work or services to be performed under this contract by the Consultant shall be subcontracted without the prior written approval of the City Manager or his/her authorized agent. If such subcontracting is authorized as herein provided, all subcontract documents shall be submitted to the City Manager or his/her authorized agent, for his/her review and approval prior to the execution of such subcontract. Further, if requested by the City Manager or his/her authorized agent, for his/her review and approval prior to the execution of such subcontract. Further, if requested by the City Manager or his/her authorized agent, the Consultant shall provide the City with such documentation as the City Manager shall require, regarding the method the Consultant used in selecting its subconsultant. The Consultant acknowledges that if the work or services to be performed under this contract is financed solely or partially through Federal funds, the selection of subconsultants is governed by regulations requiring competition between potential subconsultants or adequate justification for sole source selection. The Consultant agrees to abide by such regulations in its selection procedure.

8. Review and Coordination. To insure adequate review and evaluation of the work, and proper coordination among interested parties, the City shall be kept fully informed concerning the progress of the work and services to be performed hereunder. The City may require the Consultant to meet with designated officials of the City from time to time to review the work. Reasonable prior notice of such review meeting shall be given the Consultant.

9. Reports. The Consultant shall furnish the City with a monthly narrative progress report, in such form as may be specified by the City Manager or his/her authorized agent, outlining the work accomplished by the Consultant during the month of such report and the current status of the Project, including the percentage of the work which has been completed as of the end of the month of such report. Such report shall be furnished within five (5) days of the end of the month of such report.

10. Inspections. Authorized representatives of the City may at all reasonable times review and inspect the Project activities and data collected pursuant to this contract. All reports, drawings, studies, specifications, estimates, maps and computations prepared by or for the Consultant shall be made available to authorized representative of the City for inspection and review at all reasonable times in the Consultant's office where data is normally accumulated. Approval and acceptance of such material shall not relieve the Consultant of his/her professional obligation to correct, at his/her expense, any errors found in the work.

11. Maintenance of Cost Records. The Consultant shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred on the Project and shall make such material available at all reasonable times during the period of the contract, and for three years from the date of final payment under the contract, for inspection by the City, and if the work and services to be

performed under this contract is wholly or partially funded with Federal funds, the Comptroller General of the United States, or any of their duly authorized representatives. The Consultant shall include the provisions of this paragraph in any subcontract executed in connection with this Project.

12. Data to be Furnished Consultant. All information, data, reports, records and maps which are existing, readily available and reasonably necessary, as determined by the City Manager or his/her authorized agent, for the performance by the Consultant of the work and services required by this contract shall be furnished to the Consultant without charge by the City. The City, its agents and employees, shall fully cooperate with the Consultant in the performance of the Consultant's duties under this contract.

13. Rights in Documents Materials and Data Produced. Consultant agrees that all reports, drawings, studies, specifications, estimates, maps, computations and other data prepared by or for him under the terms of this contract shall be delivered to, become and remain the property of the City upon termination or completion of the work. The City shall have the right to use same without restriction or limitation and without compensation to the Consultant other than that provided for in this contract. For the purposes of this contract, "data" includes writings, sound recordings, or other graphic representations and works of a similar nature. No reports, maps or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the Consultant or its subconsultants. If this contract provides for the development of systems analysis products, models, electronic data processing systems, software and related services, the methods, material, logic and systems developed under this contract shall be the property of the City, and may be used as the City sees fit including the right to re-use and republish the same without limitation.

14. Publication and Publicity. Articles, papers, bulletins, reports or other material reporting the plans, progress, analysis or results and findings of the work conducted under this contract shall not be presented publicly or published without prior approval of the City Manager or his/her authorized agent. All such reports, information, data, etc., shall be kept confidential by the Consultant and shall not be made available to any individual or organization by the Consultant, until the City Manager or his/her authorized agent authorizes the release of same in writing.

15. Interest of Consultant. The Consultant covenants that neither the Consultant, nor anyone controlled by the Consultant, controlling the Consultant, or under common control with the Consultant, nor their agents, employees or subconsultants, presently has an interest, nor shall acquire an interest, direct or indirect, which would conflict in any manner or degree with the performance of its service hereunder, or which would prevent, or tend to prevent, the satisfactory performance of the Consultant's service hereunder in an impartial and unbiased manner. The Consultant further covenants that in the performance of this contract no person having any such interest shall be employed by the Consultant as an agent, subconsultant or otherwise. If the Consultant contemplates taking some action which may constitute a violation of this paragraph 16, the Consultant shall request in writing the advice of the City Manager, and if the City Manager shall notify the Consultant in writing that the Consultant's contemplated action will not constitute a violation hereof, then the Consultant shall be authorized to take such action without being in violation of this paragraph.

16. Interest of Members of the City and Others. No officer, member or employee of the City, and no public official of any local government which is affected in any way by the Project, who exercises any function or responsibilities in the review or approval of the Project or any component part thereof, shall participate in any decision relating to this contract which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly, interested; nor shall any such officer, member or employee of the City, or public official of any local government affected by the Project, have any interest, direct or indirect, in this contract or the proceeds arising therefrom.

17. Officials not to Benefit. No member of or delegate to the Congress of the United States of America, resident Commissioner or employee of the United States Government, shall be admitted to any share or part of this contract or to any benefit to arise therefrom.

18. Nondiscrimination. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, national origin, age or disability. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their gender, race, color, genetic information, religion, national origin, political affiliation, age, handicapped status, sexual orientation, sexual preference, or gender identity and expression. 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; and, participation in recreational and educational activities.

19. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the City, its officers, employees and agents from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the work herein, but only to the extent caused in whole or in part by acts or omissions of the Consultant, its officers, employees, agents, and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, except that this indemnification shall not extend to damages caused by or resulting from the sole negligence or intentional acts or omissions of the indemnity. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Subparagraph. Such obligation shall not be construed to limit or negate the Consultant's right to seek contribution from any or all joint obligees whose acts or omissions in whole or in part gave rise to the claim, damage, loss or expense indemnified hereunder.

20. Insurance. The Consultant shall not commence work under this contract until all insurance described below has been obtained and such insurance has been approved by the City, nor shall the Consultant allow any subconsultant to commence work on his subcontract until all similar insurance required of the subconsultant has been so obtained and approved by the Consultant. All policies shall be written by insurers licensed to do business in the State of Georgia and acceptable to the City, with a current A.M. Best rating of no less than A-VII or equivalent. The Consultant and any subconsultants must maintain the required insurance coverages for the duration of this agreement. The Consultant shall procure and maintain, at his/her own expense, and shall cause any subconsultants to procure and maintain the minimum insurance coverages listed below.

a. Workers' Compensation - The Consultant shall procure and shall maintain during the life of this agreement, Statutory Worker's Compensation Insurance and Employers' Liability Insurance for all of its employees to be engaged in work on the project under this agreement, and in case any such work is sublet, the Consultant shall require the subconsultant similarly to provide Workers' Compensation Insurance and Employers' Liability Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Consultant's Workers' Compensation Insurance and Employers' Liability Insurance.

b. Comprehensive General Liability - The Consultant shall procure and shall maintain during the life of this agreement, such Comprehensive General Liability Insurance as shall protect it and any subconsultant performing work covered by this agreement from claims for damages for Bodily Injury, including accidental death, as well as from claims for property damages, which may arise from operations under the agreement, whether such operations are by the Consultant or by any subconsultant or by anyone directly

or indirectly employed by either of them as well as products/completed operations coverage to protect the work being performed and completed by the Consultant and its subconsultants. The amount of insurance shall not be less than the following:

\$2,000,000	General Aggregate
\$2,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury Limit
\$1,000,000	Each Occurrence Limit

c. Errors & Omissions/Professional Liability - The Consultant shall hold the City harmless from any liability arising from acts or omissions of the Consultant's employees or subconsultants and shall furnish to the City certificates of insurance certifying that the Consultant is carrying errors and omissions/professional liability insurance in amounts not less than the following:

\$1,000,000	Each claim
\$2,000,000	Annual aggregate

d. Automobile Liability - The Consultant shall procure and maintain during the life of this agreement, Comprehensive Automobile Liability Insurance in amounts not less than the following:

\$1,000,000	Bodily Injury or death to any one person
\$1,000,000	Bodily Injury, each occurrence
\$1,000,000	Property Damage, each occurrence

The insurance shall include coverage for owned, non-owned and hired vehicles used in the performance of this agreement.

e. Umbrella Policy - The Consultant shall have an umbrella policy in place to provide at least \$1,000,000 in additional coverage limits for the work being performed under this agreement or an amount equal to that to be paid for the work being performed under this agreement, whichever is greater. The umbrella should be placed over the General Liability/Products Liability, Employers Liability and Automobile Liability.

f. Additional Insured - The Consultant shall name the City as an additional insured and shall provide the City with proof thereof with the certificate of insurance and copy of endorsement that meets the additional insured requirement or specifically lists the City as an additional insured for said work by Consultant.

g. Certificates of Insurance - Certificates acceptable to the City shall be attached to the signed Contract Documents when they are transmitted to the City for execution. These certificates shall contain the statement that "Coverage afforded under the policies will not be canceled unless at least thirty (30) days prior to cancellation written notice has been given to the City, as evidenced by receipts of Registered or Certified mail." The Consultant shall not commence work under this contract until all insurance described above has been obtained and the City has approved such insurance.

21. Changes. The City may require changes in the work and services which the Consultant is to perform hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation which are mutually agreed upon by and between the City and the Consultant, shall be incorporated in written amendments to this contract.

22. Assignability. The Consultant shall not assign, sublet or transfer all or any portion of his/her interest in this Agreement without the prior written approval of the City Manager or his/her authorized

agent.

23. Termination for Convenience. Either party to this contract may terminate said contract at any time by giving written notice to the other party of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials produced or collected under this contract (as more fully described in paragraph 14 above) shall, at the option of the City, become its property. If this contract is terminated by the City as provided in this paragraph 23, the Consultant will be paid either (a) an amount which bears the same ratio to the total compensation to be paid to the Consultant under this contract as the services actually performed prior to the termination of this contract bear to the total services to be performed by the Consultant under this contract, less payments of compensation previously made, provided however, that if less than sixty per cent (60%) of the services covered by this contract have been performed by the effective date of such termination, the Consultant shall be reimbursed (in addition to the foregoing payment) for that portion of the actual out of pocket expenses (not otherwise reimbursed under this contract) incurred by the Consultant during the contract period, which are directly attributable to the uncompleted portion of the services covered by this contract; or if payment under this contract is on a cost reimbursement basis, (b) the actual expenses incurred by the Consultant prior to the effective date of such termination, as authorized in Attachment "B."

24. Access to the Site; Photographs. The Consultant shall have access to project locations and sites at all reasonable times and shall be permitted to photograph the project during construction and upon completion for its record and future use.

25. Compliance with Illegal Immigration Reform and Enforcement Act. Consultant and all subconsultants shall comply with Georgia's Illegal Immigration Reform and Enforcement Act of 2011.

26. Applicable Law. This contract shall be deemed to have been executed and performed in the State of Georgia, and all questions of interpretation and construction shall be construed by the laws of such State.

IN WITNESS WHEREOF, the Consultant and the City have executed this Agreement as of the day first above written.

(Consultant)

ATTEST:

By: _____
Title:

CITY OF DECATUR

ATTEST:

By: _____
City Manager

APPROVED AS TO LEGAL FORM:

City Attorney

ATTACHMENT A

SCOPE OF SERVICES and WORK SCHEDULE

1. **Work and Services:** The Consultant shall perform in a satisfactory manner, as determined by the City, the work and services as outlined in the contract Attachment Exhibit A-1 which is attached hereto and made a part hereof by reference.

**Attachment
Exhibit A-1**

SCOPE OF SERVICES

**Attachment
Exhibit A-2**

Schedule

ATTACHMENT B
COMPENSATION
and
METHOD OF PAYMENT

1. **Compensation:** In no event will the total compensation to be paid to the Consultant under this contract exceed the sum of _____.

A breakdown of this compensation is shown in Exhibit B-1, which is attached to and made a part of this contract for financial reporting, monitoring and audit purposes.

2. **Method of Payment:** The following supplements that specified in paragraph 5 of the contract.

(A) Consultant's monthly invoices and monthly narrative progress reports are to be submitted to the City Manager or his/her authorized agent and must be received no later than the 5th day of the following month. The City may, at its discretion, disallow payment of all or part of an invoice received after this deadline.

(B) Consultant's final invoice and final narrative progress report must be received by the City no later than five (5) days after the project completion date specified in paragraph 3 of the contract. The City may, at its discretion, disallow payment of all or part of a final invoice received after this deadline.