CITY OF HILLIARD, OHIO

**PROFESSIONAL SERVICES AGREEMENT**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This Professional Services Agreement ("Agreement"), is by and between the City of Hilliard, Ohio, 3800 Municipal Way, Hilliard, Ohio 43026, (hereinafter referred to as “**City**”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as “**Service Provider**”).

Witnesseth, that for the mutual considerations herein specified, **City** and **Service Provider** have agreed and do hereby agree as follows:

# SECTION I – PERFORMANCE OF SERVICES

* 1. Perform the Services as set forth in Exhibit A.
  2. If the **Service Provider** is an individual, complete, sign and return the Ohio Public Employees Retirement System (“OPERS”) Independent Contractor Acknowledgement form.
  3. Give prompt notice to **City** should the **Service Provider** observe or otherwise become aware of any fault or deficit in the project or any nonconformance with the Agreement.

D. Remit to **City** after the termination of this Agreement, all files and documents pertaining to the project that have been obtained or produced including, but not limited to, permits, licenses, applications, codes, drawings, site plans, photographs and similar materials. **Service Provider** shall be entitled to retain copies for the **Service Provider's** files.

# SECTION II – OBLIGATIONS OF HILLIARD

1. Assist the **Service Provider** by placing at its disposal all available information pertinent to the Services for the project.
2. Use its best efforts to secure release of other data applicable to the project held by others.
3. Make all necessary provisions to enter upon public and private property as required to perform the Services.
4. Give prompt notice to the **Service Provider** should **City** observe or otherwise become aware of any fault or deficit in the project or any nonconformance with the Agreement.

# SECTION III – TERM AND TERMINATION

A. This Agreement begins on the date signed by the City Manager and the **Service Provider** shall promptly provide the **City** with the Services as set forth in Exhibit A.

B. The **City** may terminate this Agreement at any time by giving **Service Provider** thirty (30) days advance written notice. In the event this Agreement is terminated by **City** prior to its natural expiration, **Service Provider** shall be paid the amounts for work actually performed in accordance with this Agreement to the date of this early termination.

C. This Agreement is for a period of one year from the date signed by the City Manager and may be extended for an additional year(s) by an instrument in writing executed by the **City** and the **Service Provider**, subject to approval by Hilliard City Council, if required and subject to the appropriation of sufficient funds.

# SECTION IV - PAYMENT

1. **Service Provider** shall be compensated for the Services outlined in Exhibit A for a total not to exceed $\_\_\_\_\_\_\_\_\_\_\_. For any assigned additional tasks/projects, **Service Provider** shall be compensated as agreed upon by the **Service Provider** and **City**, contingent upon the appropriation of sufficient funds and the approval of Hilliard City Council, if required.
2. The **Service Provider** shall submit invoices to the attention of the **City’s** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or designee, properly identified with the appropriate **City** purchase order number. Payment to **Service Provider** shall be made within thirty (30) days of receiving an invoice, if additional information is not required by the **City** in order to pay the invoice.

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# SECTION V – RELATIONSHIP OF PARTIES

The parties acknowledge and agree that **Service Provider** is an independent contractor and is not an agent or employee of **City**. Nothing in this Agreement shall be construed to create a relationship between **Service Provider** and the **City** of a partnership, association, or joint venture. Further, the parties acknowledge that **Service Provider** is paid a fee, retainer or other payment as per Section IV of this Agreement; is not eligible for workers’ compensation or unemployment compensation; is not eligible for employee fringe benefits such as vacation or sick leave; does not appear on **City’s** payroll; is required to provide his or her own supplies and equipment; and is not controlled or supervised by **City** personnel as to the manner of work.

**SECTION VI – INDEMNIFICATION**A. Professional Liability. Relative to any and all claims, losses, damages, liability and cost, the **Service Provider** agrees to indemnify and save **City**, its officers, officials, and employees harmless from and against any and all suits, actions or claims for property losses, damages or personal injury arising from the negligent acts, errors or omissions by the **Service Provider** or its employees.

B. Non-Professional Liability (General Liability). To the fullest extent permitted by law, the **Service Provider** shall indemnify, defend and hold harmless **City**, its officers, officials, employees or any combination thereof, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of the acts or omissions of the **Service Provider**, provided that such claim, damage, loss or expenses is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the **Service Provider**, any subconsultant(s) of the **Service Provider**, its agents, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

# SECTION VII - INSURANCE

1. The **Service Provider** shall secure and maintain, at his/her/its own expense, errors and omissions insurance in an amount not less than One Million Dollars ($1,000,000.00) per claim/annual aggregate to protect himself from any claim arising out of the performance of professional services and caused by negligent acts, omissions or negligent acts for which the **Service Provider** may be legally negligent. The **Service Provider** shall maintain said coverage for the entire contract period and for a minimum of one year after completion of the work under the contract.
2. In addition to errors and omissions insurance, the **Service Provider** shall also secure and maintain, at his/her own expense, insurance for protection from claims under Worker's Compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and any other insurance prescribed by laws, rules, regulations, ordinances, codes or orders.
3. The **Service Provider** shall secure and maintain, at his/her own expense, General Liability insurance in an amount not less than One Million Dollars ($1,000,000.00) per occurrence.
4. The **Service Provider** shall secure and maintain, at his/her/its own expense, Property insurance for protection from claims or damages because of damage to or destruction of property including loss of use resulting therefrom in an amount not less than Five Hundred Thousand Dollars ($500,000.00).
5. The **City** shall be held harmless for any damage to the **Service Provider**'**s** property and/or equipment during the course of performance under the Contract.
6. The above referenced insurance shall be maintained in full force and effect during the life of this Contract and for one year beyond, where specified. Certificates showing that the **Service Provider** is carrying the above referenced insurance in at least the above specified minimum amounts shall be furnished to, and approved by, the **City** prior to the start of work on the project and before the **City** is obligated to make any payments to the **Service Provider** for the work performed under the provision of this contract. All such Certificates, with the exception of those for Worker's Compensation and Errors & Omissions coverage, shall clearly reflect that the City of Hilliard is an “Additional Insured”.

# SECTION VIII – EMPLOYEE DOCUMENTATION

1. **Service Provider** guarantees that the individuals employed by the Service working on this project are authorized to work in the United States. The **Service Provider** will upon demand provide **City** with appropriate documentation (Form I-9) for any **Service Provider** employee performing services for **City**.
2. The **Service Provider** agrees to indemnify **City** in accordance with Section VI of the Agreement for any issue arising out of the **Service Provider’s** hiring or retention of any individual who is not authorized to work in the United States.

**SECTION IX – TAXES**

1. **Service Provider** has the following identification number for income tax purposes: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
2. **Service Provider** is subject to and responsible for all applicable federal, state, and local taxes.
3. The **City** represents that it is a tax-exempt entity and evidence of this tax-exempt status shall be provided to **Service Provider** upon written request. **Service Provider** hereby further agrees to withhold all municipal income taxes due or payable under the provisions of Chapter 183 of the Codified Ordinances of City, Ohio, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such municipal income taxes due under such chapter for Services performed under this Agreement.
4. The **Service Provider** shall receive Internal Revenue Service form 1099 from the **City** for income tax reporting purposes.

# SECTION X – ASSIGNMENT

# Neither party may assign this Agreement without obtaining express, written consent from the other party prior to assignment.

# SECTION XI – ENTIRE AGREEMENT/AMENDMENT

# This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the parties. This Agreement may be amended or modified only by a writing executed by the duly authorized officers of the parties hereto. It is understood and agreed that this Agreement may not be changed, modified, or altered except by an instrument, in writing, signed by both parties in accordance with the laws of the State of Ohio.

# SECTION XII - DISCRIMINATION

1. No discrimination for reason of race, color, national origin, religion, sex, genetic information, pregnancy, age, ancestry, military status, sexual orientation, gender identity, marital status, veteran’s status, or disability shall be permitted or authorized by **City** and/or **Service Provider** in connection with the Services.
2. Nothing in this Agreement shall require the commission of any act contrary to any law or any rules or regulations of any union, guild, or similar body having jurisdiction over the Services of **Service Provider**.

**XIII. Governing Law/Venue.**

Any controversy or claim, whether based upon contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whether between the parties, or of any of the parties' employees, agents or affiliated businesses, will be resolved under the laws of the State of Ohio, in any court of competent jurisdiction in Franklin County, Ohio.

**XIV. Severability**.

If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and shall be replaced by a valid, mutually agreeable and enforceable provision which so far as possible achieves the same objectives as the severed provision was intended to achieve, and the remaining provisions of this Agreement shall continue in full force and effect.

**XV. Paragraph Headings**.

Paragraph headings are inserted in this Agreement for convenience only and are not to be used in interpreting this Agreement.

**IN WITNESS WHEREOF**, the parties, each by a duly authorized representative, have entered into this Agreement on the dates below. This Agreement is effective on the date signed by the City Manager as identified below.

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| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **City of Hilliard, Ohio**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Michelle L. Crandall  City Manager  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |

Approved as to Form

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Philip K. Hartmann, Law Director

**CERTIFICATE OF FUNDS**

I, David D. Delande, Director of Finance of the City of Hilliard, Ohio, do hereby certify that the funds for this Agreement with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in the amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_, have been appropriated and are in the City Treasury or are in the process of collection, and that said funds are not and cannot be appropriated for any other purpose.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date David D. Delande

Director of Finance

# Authorizing Appropriation Legislation: Ordinance No.

# Passed:

# Effective:

Purchase Order No.:

Authorizing Contract Legislation: Resolution No.

Adopted: