

# **Professional Services Agreement**

## **Scope of Work and Terms Document**

# **City of Fayetteville, NC**

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is made as of \_\_\_\_\_ by and between the **City of Fayetteville**, a North Carolina City and Municipal Corporation (“City”), and \_\_\_\_\_.

In consideration of mutual promises and covenants in this Agreement, the parties agree as follows:

### **ARTICLE 1. Services**

1.1 **Background.** The City desires to engage \_\_\_\_\_ to provide certain professional services as fully described and outlined in the Scope of Work which is attached hereto and fully incorporated into this Agreement by reference. \_\_\_\_\_ is willing to provide such services as outlined in the Scope of Work on the terms and conditions stated in this Agreement.

1.2 **Scope of Work.** \_\_\_\_\_ will furnish the services as set forth in the Scope of Work which is incorporated by reference herein.

1.3 **Time of Performance.** \_\_\_\_\_ will perform the services promptly and according to the project schedule noted in the Scope of Work. The City will cooperate with \_\_\_\_\_ as reasonably required to complete the services outlined in the Scope of Work. Both parties acknowledge that changes from or delays in the timeline may extend the date(s) for delivery of the service(s).

1.4 **Term.** The term of this Agreement shall begin on the date expressed in the introductory paragraph of this Agreement and shall continue until terminated based upon the completion of services by \_\_\_\_\_ as outlined in the Scope of Work.

### **ARTICLE 2. Payment**

2.1 **Basis of Compensation:** The City shall pay \_\_\_\_\_ for services rendered under this Agreement in amounts tied to the various project milestones as set forth in the Scope of Work. Each payment shall be invoiced upon completion of each successive milestone and the City shall pay within thirty (30) days. In no event shall the payment for all work performed pursuant to this Agreement exceed the amount of \$\_\_\_\_\_ without prior written authorization of the City. Such payment shall be full compensation for all work performed and for all labor, materials, supplies, equipment and incidentals necessary to complete the work.

2.2. Records. \_\_\_\_\_ shall keep records and accounts pertaining to this Agreement available for inspection by the City for a period of three (3) years after final payment. Copies of records and accounts pertaining to this Agreement shall be made available to the City upon request.

**ARTICLE 3. Termination**

3.1 Breach: If either party materially breaches a material provision of this Agreement, the other party may terminate this Agreement upon 30 days' notice unless the breach is cured within the notice period. Upon termination of this Agreement by either party for any reason prior to completion of the work:

- a) \_\_\_\_\_ shall deliver to City a copy of all work product completed through the date of the termination together with a written summary of the work.
- b) City shall pay \_\_\_\_\_ all sums due under this Agreement for the work completed through the date of termination in accordance with the Scope of Work.

**ARTICLE 4. Indemnification**

4.1 Indemnification. To the extent allowed by North Carolina law, in the event that the City, its elected officials, officers, directors, employees or agents are made parties to any judicial or administrative proceeding arising in whole or in part out of the negligent performance, nonperformance, or omission by \_\_\_\_\_ and/or its agents of any of its obligations under this Agreement, then \_\_\_\_\_ shall indemnify and hold City harmless for any and all judgments, settlements, and costs (including reasonable attorneys' fees) which City incurs or pays in connection therewith except that \_\_\_\_\_ shall not be required to reimburse for such amounts if the court rendering the judgment or the agency making the award determines that the liability underlying the judgment or award (or attorneys' fees) was caused by the gross negligence, fraud or criminal conduct of the City, its elected officials, agents, employees, officers or directors.

**ARTICLE 5. Data Security**

5.1 Protected Information. \_\_\_\_\_ acknowledges that its performance of Services under this Agreement may involve access to confidential City information including, but not limited to, personally-identifiable information, employee records, protected health information, or individual financial information (collectively, "Protected or Private Information") that is subject

to state or federal law/rules restricting the use and disclosure of such information, including, but not limited to, the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of Part 164); the Payment Card Industry Data Security Standards; and Criminal Justice Information Services (CJIS) Security Policy. \_\_\_\_\_ agrees to comply with all applicable federal and state laws restricting the access, use and disclosure of Protected Information. \_\_\_\_\_ agrees to include all of the terms and conditions contained in all subcontractor or agency contracts for third parties providing services under this Agreement.

5.2 Compliance with Fair Information Practice Principles. With respect to the City's Protected or Private Information, and in compliance with all applicable laws and regulations, \_\_\_\_\_ shall comply in all respects reasonably pertinent to the Fair Information Practice Principles, as defined by the U.S. Federal Trade Commission (<http://www.ftc.gov/reports/privacy3/fairinfo.shtm>). If collecting Protected or Private Information electronically from individuals on behalf of the City, \_\_\_\_\_ shall utilize a privacy statement or notice in conformance with such principles.

5.3 Prohibition on Unauthorized Use or Disclosure of Protected Information. \_\_\_\_\_ agrees to hold the City's Protected or Private Information, and any information derived from such information, in strictest confidence. \_\_\_\_\_ shall not access, use or disclose Protected or Private Information except as permitted or required by the Agreement or as otherwise authorized in writing by City, or applicable laws. If required by a court of competent jurisdiction or an administrative body to disclose Protected or Private Information, \_\_\_\_\_ will notify City in writing immediately upon receiving notice of such requirement and prior to any such disclosure, to give City an opportunity to oppose or otherwise respond to such disclosure (unless prohibited by law from doing so). Any transmission, transportation or storage of Protected or Private Information outside the United States is prohibited except on prior written authorization by the City.

5.4 Safeguard Standard. \_\_\_\_\_ agrees to protect the privacy and security of City data designated as Protected or Private Information according to all applicable laws and regulations, by commercially-acceptable standards, and no less rigorously than it protects its own confidential information. \_\_\_\_\_ shall implement, maintain and use appropriate

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administrative, technical and physical security measures to preserve the confidentiality (authorized access), integrity and availability of the Protected or Private Information. While \_\_\_\_\_ has responsibility for the Protected or Private Information under the terms of this agreement, \_\_\_\_\_ shall ensure that such security measures are regularly reviewed and revised to address evolving threats and vulnerabilities.

- All facilities used to store and process Protected or Private Information will employ commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Service Provider's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved.
- Without limiting the foregoing, \_\_\_\_\_ warrants that all Protected or Private Information will be encrypted in transmission (including via web interface) and may require encrypted storage at no less than 128bit level encryption.
- \_\_\_\_\_ will use industry standard and up-to-date security tools and technologies such as antivirus protections and intrusion detection methods in providing Services under this Agreement.

\_\_\_\_\_ shall not store or process City Protected or Private Information outside of data centers located in the United States.

5.5 Return or Destruction of Protected Information. Within 30 days of the termination, cancellation, expiration or other conclusion of the Agreement, \_\_\_\_\_ shall return the Protected or Private Information to City in an agreed upon format, unless the City requests in writing that such data be destroyed. This provision shall also apply to all Protected or Private Information that is in the possession of subcontractors or agents of \_\_\_\_\_. Such destruction shall be accomplished by "purging" or "physical destruction" in accordance with commercially reasonable standards for the type of data being destroyed (e.g., Guidelines for Media Sanitization, NIST SP 800-88). \_\_\_\_\_ shall certify in writing to City that such return or destruction has been completed.

5.6 Breaches of Protected Information. Definition. For purposes of this article, the term, "Breach," has the meaning given to it under the applicable state or federal law.

5.6.1 Reporting of Breach. Immediately upon discovery of a confirmed or suspected Breach, \_\_\_\_\_ shall report both orally and in writing to the City. In no event shall the report be made more than two (2) business days after \_\_\_\_\_ knows or reasonably suspects a Breach has or may have occurred. In the event of a suspected Breach, \_\_\_\_\_ shall keep the City informed regularly of the progress of its investigation until the uncertainty is resolved.

Service Provider's report shall identify:

- (i) The nature of the unauthorized access, use or disclosure,
- (ii) The Protected or Private Information accessed, used or disclosed,
- (iii) The person(s) who accessed, used and disclosed and/or received Protected or Private Information (if known),
- (iv) What \_\_\_\_\_ has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure, and
- (v) What corrective action \_\_\_\_\_ has taken or will take to prevent future unauthorized access, use or disclosure.
- (vi) \_\_\_\_\_ shall provide such other information, including a written report, as reasonably requested by City.

5.6.2 Coordination of Breach Response Activities. In the event of a Breach, \_\_\_\_\_ will:

- Immediately preserve any potential forensic evidence relating to the breach;
- Promptly (within 2 business days) designate a contact person to whom the City will direct inquiries, and who will communicate \_\_\_\_\_ responses to City inquiries;
- As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore City service(s) as directed by the City, and undertake appropriate response activities;
- Provide status reports to the City on Breach response activities, either on a daily basis or a frequency approved by the City;
- Coordinate all media, law enforcement, or other Breach notifications with the City in advance of such notification(s), unless expressly prohibited by law;

- Make all reasonable efforts to assist and cooperate with the City in its Breach response efforts; and
- Ensure that knowledgeable \_\_\_\_\_ staff are available on short notice, if needed, to participate in City-initiated meetings and/or conference calls regarding the Breach.

5.6.3 Costs Arising from Breach. In the event of a Breach by \_\_\_\_\_ or its staff, \_\_\_\_\_ agrees to promptly reimburse all costs to the City arising from such Breach, including but not limited to costs of notification of individuals, establishing and operating call center(s), credit monitoring and/or identity restoration services, time of City personnel responding to Breach, civil or criminal penalties levied against the City, attorney's fees, court costs, etc. Any Breach may be grounds for immediate termination of this Agreement by the City.

5.7 Examination of Records. City shall have access to and the right to examine any pertinent books, documents, papers, and records of \_\_\_\_\_ involving transactions and work related to this agreement until the expiration of five years after final payment hereunder. \_\_\_\_\_ shall retain project records for a period of five years from the date of final payment.

5.8 Assistance in Litigation or Administrative Proceedings. \_\_\_\_\_ shall make itself and any employees, subcontractors, or agents assisting \_\_\_\_\_ in the performance of its obligations under the Agreement available to City at no cost to City to testify as witnesses in the event of an unauthorized disclosure caused by Service Provider that results in litigation or administrative proceedings against City, its directors, officers, agents or employees based upon a claimed violation of laws relating to security, privacy or arising out of this agreement.

5.9 Survival. The \_\_\_\_\_ shall maintain an industry standard disaster recovery program to reduce in potential effect of outages because of supporting data center outages. Any backup site used to store City Protected or Private data will include the same information security and privacy controls as the primary data center(s).

5.10 Right to Audit. \_\_\_\_\_ agrees that, as required by applicable state and federal law, auditors from state, federal, City, or other agencies so designated by the State or City, shall have the option to audit the outsourced service. Records pertaining to the service shall be made available to auditors and the City during normal working hours for this purpose.

**ARTICLE 6. Other**

6.1 Assignment. It is the intent of this Agreement to secure the services of \_\_\_\_\_ and failure of \_\_\_\_\_ for any reason to make the personal services available to the City for the purposes described in this Agreement and Statement of Work shall be cause for termination of this Agreement. \_\_\_\_\_ shall not assign this Agreement without prior written consent of the City. Should \_\_\_\_\_ find it necessary to hire other employees or independent contractors to assist with the duties under this Agreement, \_\_\_\_\_ shall use its best efforts and all due diligence to ensure that said employee or independent contractor is of high moral character and has not engaged in any misconduct involving children.

6.2 Non Appropriation. Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the City are from appropriations and monies from the City Council and other governmental entities. In the event sufficient appropriations or monies are not made available to the City to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the City.

6.3. Default. In the event of substantial failure by \_\_\_\_\_ to perform in accordance with the terms of this Agreement, City shall have the right to terminate \_\_\_\_\_ upon ten (10) days written notice in which event \_\_\_\_\_ shall have neither the obligation nor the right to perform further services under this Agreement nor shall the City be obligated to make any further payment for work that has not been performed.

6.4. Governing Law. The validity, interpretation, and execution of this Agreement and the performance of and rights accruing under this Agreement are all to be governed by the laws of the State of North Carolina.

The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Twelfth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

6.5 Venue. Exclusive venue for litigation arising from this Agreement shall be a court of competent jurisdiction in Cumberland County, North Carolina.

6.6 Non Discrimination. \_\_\_\_\_ agrees not to discriminate by reason of age, race, religion, color, sex, national origin, disability or other applicable law while performing the services required herein.

6.7 Compliance with Laws. \_\_\_\_\_ agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City and units of local government.

6.8 Severability. The parties agree that if any provision of this Agreement shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform to the purposes of this Agreement and the requirements of applicable law.

6.9 Force Majeure. Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

6.10 Morality Clause. If, in the sole opinion of the City, at any time \_\_\_\_\_ or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the City or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the City's finances, public standing, image, or reputation or are embarrassing or offensive to the City or may reflect unfavorably on the City or are derogatory or offensive to one or more employee(s) or customer(s) of the City, the City may immediately upon written notice to \_\_\_\_\_ terminate this Agreement, in addition to any other rights and remedies that the City may have hereunder or at law or in equity.

6.11 Amendment. The City and \_\_\_\_\_ may, from time to time, request changes in services to be performed by \_\_\_\_\_. Any such changes that are mutually agreed upon by the City and \_\_\_\_\_ shall be incorporated herein by written amendment to this Agreement. It is mutually agreed and understood that no alteration or validation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that any oral understanding or agreements not incorporated herein, unless made in writing and signed by the parties hereto, shall not be binding.

6.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties. Any proposed change to this Agreement shall be submitted to the City for its prior approval. No modification, addition, deletion, etc., to this Agreement shall be effective unless and until such changes are reduced to writing and executed by the authorized officers of each party.

In witness whereof the parties have caused this Agreement to be signed by their respective duly authorized representatives as of the date first written above.

**CITY'S TERMS SUPERSEDE:** To the extent a conflict exists between the terms(s) of this Agreement and the terms(s) and condition(s) in any of the attachments to the Agreement, the terms of this contract shall govern.

6.13 E-Verify. \_\_\_\_\_ hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. \_\_\_\_\_ further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). Contractor hereby pledges, attests and warrants through execution of this Agreement that \_\_\_\_\_ complies with the requirements of Article 2 of Chapter 64 of North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by \_\_\_\_\_ shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement.

Attest:

**CITY OF FAYETTEVILLE:**

\_\_\_\_\_  
Pamela Megill  
City Clerk

\_\_\_\_\_  
Telly C. Whitfield, Ph.D.  
Assistant City Manager

\_\_\_\_\_  
Dated

**“Place vendor name here”**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Vendor Signature

This instrument has been pre-audited in the manner  
Required by the Local Government Budget and Fiscal  
Control Act.

\_\_\_\_\_  
Jay Toland  
Chief Financial Officer

*ATTACH SCOPE OF WORK AS EXHIBIT 1*

# EXHIBIT 1