PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (herein "Agreement") is made and entered into as of the _____ day of _____, 20___ by and between the CITY OF GERMANTOWN, TENNESSEE, a Tennessee municipal corporation, (herein the "CITY") and _____ [insert name of CONSULTANT], a _____ [State where CONSULTANT established] _____ [type of entity – e.g., corporation, LLC, partnership] (herein the "CONSULTANT").

W I T N E S S E T H:

WHEREAS, the CITY desires to retain a professional to render services in connection with _____ [DESCRIPTION OF PROJECT/EXAMPLES: 1. storm sewer system improvements in an area south of the intersection of Elmhurst Drive and Great Oaks Road; 2. install a traffic signal at the intersection of Wolf River Boulevard and West Brierbrook Road] (herein the "Project"), and

WHEREAS, the services of a competent professional [engineering] consultant will be required [for surveys, engineering design, preparation of construction plans and other related services] for the Project, and

WHEREAS, such services are of a distinct and non-competitive nature, and

WHEREAS, the CONSULTANT has the requisite experience, abilities and resources to perform the foregoing, and

WHEREAS, the CONSULTANT has submitted a proposal for the aforesaid work dated _____, 20____ in the form attached hereto and made a part hereof as Exhibit A (herein the "Proposal"), and

WHEREAS, the CONSULTANT desires to enter into this Agreement as an independent contractor and is ready, willing and able to provide the services in accordance with the terms of and subject to the conditions in this Agreement.

NOW, THEREFORE, for good and valuable consideration, received or to be received, the sufficiency of which the parties acknowledge, the parties agree as follows:

1.00 SCOPE OF AGREEMENT

The CONSULTANT shall perform those services enumerated in the Proposal. The CITY shall pay the CONSULTANT in accordance with the terms of the Proposal. If so specified in the Proposal, the CITY shall also perform services and provide materials in accordance with the terms of the Proposal.

2.00 ADDITIONAL SERVICES

In the event the CITY requests that the CONSULTANT perform additional services not covered by the Proposal, the CONSULTANT shall perform such additional services after the CITY and the CONSULTANT enter into an equitable agreement regarding the additional services, such agreement to be subject to the approval of the Board of Mayor and Aldermen.

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3.00 NOTICE TO PROCEED

The CONSULTANT shall commence the professional services called for under this Agreement upon the written notice to proceed issued by the CITY.

4.00 CONSULTANT'S PERSONNEL

The CONSULTANT certifies that it presently employs, and shall continue to employ throughout the term of this Agreement, adequate qualified personnel for the performance of the services contemplated under this Agreement.

5.00 CONFLICT OF INTEREST

The CONSULTANT declares that neither the Mayor, nor any Aldermen, nor any other CITY official holds a direct or indirect interest in this Agreement. The CONSULTANT pledges that it will notify the CITY in writing should any CITY official become either directly or indirectly interested in this Agreement. The CONSULTANT declares that as of the date of this declaration that it has not given or donated or promised to give or donate, either directly or indirectly, to any official or employee of the CITY, or to pay anyone else for the benefit of any official or employee of the CITY, any sum of money or other thing of value for aid or assistance in obtaining this Agreement. The CONSULTANT further pledges that neither it nor any of its owners, officers or employees will give or donate or promise to give or donate, directly or indirectly, to any official or employee of the CITY, or anyone else for the benefit thereof, any sum of money or other thing of value for aid or assistance in obtaining any change order to this Agreement.

6.00 DISPUTES

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the CITY and the CONSULTANT shall be referred to the City Engineer, or his duly authorized representative, whose decision regarding such disputed question of fact shall be final and binding.

7.00 ESTIMATES

The parties to this Agreement hereby acknowledge that the CONSULTANT has no control over: the cost of labor, materials and equipment; the methods of determining prices; or competitive bidding and market conditions, except with regard to the CONSULTANT'S services. Therefore, the CONSULTANT hereby warrants that the estimates of cost for the Project contained in the Proposal are made on the basis of the CONSULTANT'S experience and qualifications and represent the CONSULTANT'S best judgment as a design professional familiar with the construction industry.

8.00 CONSULTANT'S ASSISTANCE WITH BIDDING

In the event that the lowest bid received by the CITY is greater than the CITY'S budget for the Project, the CONSULTANT agrees to work with the CITY, without additional compensation to the CONSULTANT, (i) to consider all alternatives available to reduce the anticipated cost of the Project and (ii) to prepare any new bid documents for the Project.

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9.00 COMPLIANCE WITH LAWS

The CONSULTANT agrees to observe and to comply at all times with all applicable Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and to comply with all instructions and orders issued by the CITY regarding this Project.

10.00 TERMINATION

Upon thirty (30) days written notice, with or without cause, the CITY may terminate this Agreement. Following such termination, the CITY and the CONSULTANT shall agree upon an estimate of the percentage of completion of the CONSULTANT'S services rendered hereunder as of the date such notice is given. The CITY shall pay the CONSULTANT a pro rata fee based upon the agreed estimated percentage of completion of the CONSULTANT'S services rendered hereunder.

11.00 OWNERSHIP OF DOCUMENTS

All documents prepared by the CONSULTANT in connection with the provision of professional services under this Agreement, including, but not limited to, plans, drawings, specifications, and data or programs stored electronically, shall be delivered to and become the sole and exclusive property of the CITY and may be used by the CITY and the CITY shall not be restricted in any way in its use of such material.

12.00 CONFERENCES AND VISITS TO SITE

The CONSULTANT agrees to attend all conferences related to the Project to be held at the request of the CITY. The CONSULTANT agrees further to visit the site of the work at any time when requested to do so by the CITY.

13.00 CONSULTANT'S ENDORSEMENT

The CONSULTANT'S seal and endorsement shall be placed on all required reports, final plans, specifications, estimates, shop drawings and other data furnished to the CITY by the CONSULTANT.

14.00 CONTROL

All work by the CONSULTANT is to be performed in accordance with those professional standards applicable to the profession to which the CONSULTANT belongs and in accordance with the established customs, practices, standards and procedures of the CITY, except as such might not be consistent with established professional standards. The decision of the CITY is to control in all questions regarding location, type of design, dimension of design and similar questions. Throughout the Project, the CONSULTANT shall request, and the CITY shall provide, conferences to assure that the CONSULTANT'S work is being done in a satisfactory manner and that all designs are in accordance with the desires of the CITY.

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15.00 REVISIONS OF PLANS

15.01. Minor Revisions. It is understood that minor revisions in final plans, including change orders, will be made by the CONSULTANT without additional compensation as the work progresses.

15.02. Major Changes. In the event that the CITY requests major changes during the progress of the work or after completion of the work which will require revisions of work otherwise satisfactorily accomplished, and provided that such changes are not required due to any error or omission by the CONSULTANT, the CONSULTANT will make the necessary revisions as required by the CITY. With respect to such revisions, the CITY shall pay CONSULTANT additional compensation as outlined in Paragraph 2.00 herein.

16.00 DELAYS AND EXTENSIONS

16.01. Discretionary Extensions of Time. The CITY may grant, within the CITY'S sole discretion, an extension of time to the CONSULTANT for delays beyond the CONSULTANT'S control, or for delays caused by tardy approvals of work in progress by those official agencies charged with inspecting such work. No additional compensation shall be allowed for such delays.

16.02. Consent to Extension of Time. It is understood that time is of the essence in the performance and completion of the CONSULTANT'S work. It is agreed that no extension of time will be valid without the CITY'S prior written consent, and no such consent should be assumed.

16.03. Cooperation with the CITY. The CONSULTANT understands that the completion of the overall Project is dependent upon the CONSULTANT'S performance in an expeditious manner conforming to the time schedule contained in this Agreement. The CONSULTANT shall cooperate with the CITY in scheduling and performing the CONSULTANT'S work to avoid conflict or interference with the work of others and shall perform its work efficiently, expeditiously, and in a manner that will not cause delay in the progress of the Project.

16.04. Withholding of Payments. Without limiting the CITY'S rights or remedies for the CONSULTANT'S default or delay, the CITY may withhold payment or decline to make payment to the CONSULTANT of all or any portion of the CONSULTANT'S fee or reimbursable expense whenever, in the CITY'S absolute discretion, the CONSULTANT'S work is defective or inadequate, or reasonable evidence exists that the CONSULTANT'S work will not be completed within the foregoing time schedule, or the CONSULTANT has otherwise failed or refused to comply with its obligations to the CITY.

17.00 REIMBURSEMENT FOR EXPENSES

The CONSULTANT shall not be reimbursed for any expenses, unless such expenses either are authorized in accordance with the Proposal or are authorized in writing by the CITY before the CONSULTANT incurs any such expenses.

SAMPLE

18.00 CLAIMS, LIABILITY AND INDEMNITY

The CONSULTANT shall assume all risk in connection with the performance of this Agreement, and shall be liable for any damages to persons or property resulting from the negligent or willful acts, errors, or omissions of the CONSULTANT, its agents, servants, and/or employees in connection with the prosecution and completion of the work covered by this Agreement. The CONSULTANT agrees that it will indemnify and hold the CITY and its employees harmless from all claims of any type and for any expenses and costs including attorney's fees and court costs which may be incurred by the CITY arising from the negligent or willful acts, errors, or omissions of the CONSULTANT, its agents, servants and/or employees in the performance of this Agreement. The indemnities set forth herein shall survive the expiration or termination of this Agreement.

18.01. Professional Responsibility of Consultant. CONSULTANT, for itself, its agents, servants, employees and sub-consultants, agrees to perform all professional services hereunder or associated herewith in accordance with all applicable professional standards and in accordance with sound engineering practice and principles.

As to matters of professional liability, CONSULTANT agrees to indemnify and hold harmless the CITY, its agents, volunteers, servants, employees and officials from and against all liability, loss, costs, reasonable attorney's fees or other expenses suffered by those indemnified as a result of any claim to the extent that same is found to have been caused by the negligent acts, errors, or omissions of the CONSULTANT or those for whom the CONSULTANT is legally liable.

18.02. General Responsibility of Consultant. As to all matters of liability related to or arising out of this agreement other than professional liability, CONSULTANT agrees to indemnify and hold harmless the CITY, its agents, volunteers, servants, employees and officials from and against all liability, loss, costs, reasonable attorney's fees or other expenses suffered by those indemnified as a result of any claim to the extent that it is found to have been caused by the acts, errors, or omissions of the CONSULTANT or those for the CONSULTANT is legally liable.

18.03. Insurance Coverage. The CONSULTANT will carry Comprehensive General Liability Insurance and Errors and Omissions Insurance in furtherance of the above indemnification. The Comprehensive General Liability Insurance shall be issued by a responsible insurance company and in a form acceptable to the CITY and provide coverage on an occurrence basis against claims for bodily injury or property damage with combined single limits of not less than One Million Dollars ($1,000,000) for Bodily Injury and Property Damage. The errors and Omissions Insurance coverage shall be issued by a responsible insurance company and in a form acceptable to the CITY and provide coverage in the amount of not less than One Million Dollars ($1,000,000). The CONSULTANT shall provide the CITY with Certificates on such policies in forms acceptable to the CITY, which Certificates will be furnished to the CITY after execution of this Agreement and prior to issuance of notice to proceed. The indemnities set forth shall survive the expiration or termination of this Agreement

CONSULTANT, with prior approval of the CITY, may assume the defense of any such professional liability claim made against the CITY, its agents, volunteers, servants, employees or officials.

SAMPLE

19.00 EQUAL EMPLOYMENT OPPORTUNITY

19.01. Non-discrimination. In carrying out its professional services under this Agreement, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin or sex. The CONSULTANT shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, national origin or sex. Such action shall include, but not be limited to: employing; upgrading; demoting or transferring; recruiting or paying recruitment compensation; and selecting for training, including apprenticeships.

19.02. Posting and Advertising. The CONSULTANT agrees to post in conspicuous spaces available to employees and applicants for employment a notice setting forth the provisions of the non-discrimination clause contained in Paragraph 19.01 hereinabove. The CONSULTANT shall state in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT that all qualified applicants shall receive consideration for employment without regard to race, creed, color, national origin or sex. The CONSULTANT shall incorporate the foregoing requirements of this Paragraph 19.02 in all subcontracts, if any, for services covered by this Agreement.

20.00 TRANSFER, ASSIGNMENT OR SUBLETTING

This Agreement shall not be transferred or assigned or sublet without prior written consent of the CITY.

21.00 FACSIMILE; PDF SIGNATURES

Execution and delivery of this Agreement and all agreements entered into in connection with the transaction set forth herein (the "Collateral Agreements") by delivery of a facsimile or portable document format ("PDF") copy bearing the facsimile or PDF signature of any party hereto shall constitute a valid and binding execution and delivery of this Agreement and Collateral Agreements by such party. Such facsimile and PDF copies shall constitute enforceable original documents

22.00 AGREEMENT CONTROLLING

To the extent that any provision hereof is inconsistent with a provision contained in the Proposal, the provision contained herein shall govern.

SAMPLE

[Signatures on next page]

WITNESS THE DUE EXECUTION HEREOF.

CITY OF GERMANTOWN, TENNESSEE

By: _____
Mike Palazzolo, Mayor

ATTEST:

By: _____
City Clerk/Recorder

APPROVED AS TO FORM:

_____
City Attorney

[INSERT NAME OF CONSULTANT]

By: _____

Its: _____

CONSULTANT'S Mailing Address:
_____
_____

CONSULTANT'S Telephone Number:
(_____)_____

CONSULTANT'S Facsimile Number:
(_____)_____

SAMPLE

EXHIBIT A

Proposal from _____

Dated _____

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