

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made this ___ day of _____, 2019 between the City of Hapeville, Georgia, a municipal corporation incorporated under the laws of Georgia, hereinafter referred to as “the City,” and B+C Studio, a landscape architecture and planning firm, hereinafter referred to as “the Consultant”.

WITNESSETH:

That on the terms and conditions hereafter set forth, the City does hereby employ the Consultant.

1.

Scope and Term of Agreement:

The Consultant hereby agrees to provide the necessary personnel and facilities to render planning and other professional services to the City as hereinafter set forth for a period of twelve (12) months beginning on the ___ day of _____, 2019, and ending the ___ of _____, 2020, with an automatic annual renewal for a term of twelve (12) months. Primary assistance rendered by the Consultant shall be in the field of comprehensive planning, zoning administration, and community development by the Consultant's team, provided, however, that the Consultant's staff resources shall be available as requested by the City.

The Consultant agrees to provide the following professional services to the planning program of the City, as each service is requested by the City Manager, during the term of this agreement:

- a) Zoning application, conditional use permit and site plan review services;
- b) Variance and appeals application review services;
- c) Architectural standards review services;
- d) Comprehensive Plan updates, including Short Term Work Program (STWP) project development;
- e) Periodic updates to the Zoning Ordinance, Zoning Map and other ordinances;
- f) Recommendations concerning land use and zoning, including annexation;
- g) Sign permit application reviews services;
- h) Occupational tax permit review services;
- i) Alcohol license review services;
- j) Grant writing;
- k) General planning services, and
- l) The Consultant agrees to attend public meetings as needed, site visits, and attend work sessions with the City Manager per month during each calendar year of execution and renewal, if renewed, of the planning program of the City.

The City, through the City Manager, may authorize the Consultant to undertake additional planning and technical services on a per hour basis, flat fee or by negotiation and mutual agreement.

2.

Compensation:

For such services performed by the Consultant listed in Paragraph 1 above, , the City agrees to pay the Consultant the following hourly rates:

One hundred and fifteen dollars (\$115.00) per hour – Director

Ninety-five (\$95.00) per hour – Senior Planner

Eighty dollars (\$80.00) per hour – Planner

Fifty dollars (\$50.00) per hour – Administrative Support

3.

Termination:

- (a) Notwithstanding any provision of this Agreement, each party reserves the right to terminate this contract, without cause, by giving a minimum of sixty (60) days written notice.
- (b) If this Agreement is terminated by the City for convenience, Consultant shall be exclusively limited to receiving only compensation for the work performed and appropriately documented to and including the effective date identified in the written termination notice. Any amount over the amount otherwise due by the City for the services provided prior to the termination date shall be refunded by the Consultant within ten (10) days of the date of termination, with the exception of any costs incurred by the Consultant in removal of any equipment owned by Consultant from premises owned by the City, which costs shall be borne by the City in the event of termination for convenience by the City.

4.

Termination of Services and Return of Property

Upon expiration or earlier termination of this Agreement, the Consultant shall deliver promptly to the City all property relating to the services that are owned by the City.

5.

Standard of Performance

Consultant warrants and represents that it possesses the special skill and professional competence, expertise and experience to undertake the obligations imposed by this Agreement. Consultant agrees to perform in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the profession, and to otherwise perform as is necessary to undertake the services required by this Agreement.

6.

Assignment and Subcontracting:

The Consultant shall not assign or subcontract the whole or any part of this Agreement without the City's prior written consent.

7.

Conflicts of Interest

Consultant warrants and represents that:

- (a) The services to be performed hereunder will not create an actual or apparent conflict of interest with any other work it is currently performing; and
- (b) Consultant is not presently subject to any agreement with a competitor or with any other party that will prevent Consultant from performing in full accord with this Agreement; and
- (c) Consultant is not subject to any statute, regulation, ordinance or rule that will limit its ability to perform its obligations under this Agreement. The Parties agree that Consultant shall be free to accept other work during the term hereof; provided, however, that such other work shall not interfere with the provision of services hereunder.

8.

Proprietary Information

Consultant acknowledges that it may have access to and become acquainted with confidential and other information proprietary to the City including, but not limited to, information concerning the City, its operations, customers, citizens, business and financial condition, as well as information with respect to which the City has an obligation to maintain confidentiality (collectively referred to herein as "Proprietary Information"). Consultant and its agents or employees agree not to disclose, directly or indirectly, to anyone or to use or allow others to use, for any purpose whatsoever, any Proprietary Information of any type, whether or not designated confidential or proprietary, acquired in the course of performing under this Agreement. The obligations of the Consultant under this Paragraph shall survive the termination of this Agreement.

9.

Waiver of Breach:

The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate or be construed to constitute a waiver of any subsequent breach or violation of the same

or other provision thereof.

10.

Miscellaneous provisions:

- a) It is agreed that the City shall make available to the Consultant previously prepared planning studies, reports and related information and data which would be useful to the Consultant in carrying out the work program herein set forth.
- b) The Consultant represents that it has paid occupation tax in the City or provided evidence that it is otherwise exempt.
- c) Upon execution of this Agreement, the Consultant will provide a copy of its Workers' Compensation certificate to the City or evidence that it is otherwise exempt.
- d) Upon execution of this Agreement, the Consultant will provide proof that it maintains or carries in-force Liability Insurance in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00). This insurance policy shall also designate the City as an additional insured. This insurance is non-cancelable during the duration of this Agreement. Cancellation of this insurance will be considered a material breach of this Agreement.
- e) The Consultant shall furnish the City with evidence that it is insured against professional errors and omissions in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and shall further provide to the City a certificate from its insurer that said insurance will not be diminished, canceled, or terminated absent sixty (60) days' advance written notice to the City by registered mail. Said insurance shall be provided by an insurance company authorized to do business in the State of Georgia and said insurance shall remain in effect for a period of three (3) years after termination of this Agreement.
- f) This Agreement will terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligation of the City under this Agreement.
- g) The Agreement obligates the City only for sums payable during the calendar year of execution, or in the event of a renewal by the City, for the sums payable for the individual calendar year renewal term.
- h) This Agreement in no way is deemed to create a debt incurred by the City for the payment of any sum beyond the calendar year of execution or, in the event of a renewal, beyond the calendar year of such renewal.
- i) Determination of satisfactory performance of the terms of this Agreement rests in the sole reasonable discretion of the supervisory personnel selected by the City.
- j) The Consultant acknowledges that it is solely an independent contractor and the Consultant is not an employee of the City and is not entitled to any employment rights or benefits from the City. Because of the Consultant's independent contractor status, no tax withholding shall be made from the Payments contemplated by Section 3 hereof. The Consultant agrees to indemnify the City for any tax liabilities or penalties it may incur by reason of the Consultant's performance hereunder. If the Consultant shall be deemed to be an employee of the City for any purpose, the Consultant shall indemnify and hold the City harmless from and against any and all liabilities, costs, and expenses that the City may incur by reason thereof, including, but not limited to, attorney's fees and penalties.

- k) Employees, aides, staff, helpers, or any person who receives any form of consideration for services or who performs any services towards the execution of this Agreement are deemed to be the sole responsibility of the Consultant for the purposes of all Workers' Compensation and insurance claims. The City reserves the right to superintend the performance of this Agreement only to the extent that the desired results are obtained. No recommendation or requirement in this Agreement should be deemed to obligate the City under the Workers' Compensation Act to insure the Consultant's employees, aides, staff, helpers or any person who receives any form of consideration for services or who performs any services towards the execution of this Agreement on behalf of the Consultant.
- l) This Agreement constitutes the entire Agreement and understanding among the parties hereto and supersedes and revokes any prior agreement or understanding relating to the subject matter of this Agreement. No change, amendment, or attempted waiver of any of the provisions hereof shall be binding upon the other parties unless reduced to writing and signed by all parties hereto.
- m) Nothing contained in the Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the City.
- n) Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Consultant. This Agreement shall not restrict the City from acquiring similar, equal or like services from other entities or sources.
- o) The Consultant agrees to indemnify, hold harmless, and defend the City, its officers, boards, commissions, and employees, from and against any liability, claims, damages, fines, penalties, costs, and expenditures (including reasonable attorney's fees and costs of litigation defense and/or settlement) arising out of the Consultant's work under this Agreement and/or the Consultant failure to comply with the terms set forth in this Agreement. The Consultant further agrees to indemnify, hold harmless, and defend the City, its officers, boards, commissions, and employees, from and against any claims by employees, aides, staff, or helpers of the Consultant or any person who performs any services for the Consultant under this Agreement in connection with the work performed under this Agreement.
- p) The Consultant agrees that it will comply with all applicable federal, state, county, and local laws, ordinances, regulations, and codes in the performance of its obligations under this Agreement. The Consultant further agrees to indemnify, hold harmless, and defend the City, its officers, boards, commissions, and employees from and against any liability, claims, damages, fines, penalties, costs, and expenditures (including reasonable attorney's fees and costs of litigation defense and/or settlement) that may be sustained by reason of the failure of the Consultant or its employee(s), agent(s), aide(s), staff, or helper(s) or any person who performs any services for the Consultant under this Agreement to comply with any laws, ordinances, regulations, and codes.
- q) The Consultant shall participate in the federal work authorization program throughout the contract period, as provided in O.C.G.A. §13-10-91. The Consultant shall be required to, at the time of the contract, provide a signed, notarized affidavit, attesting that it has registered with, is authorized to use, and uses the federal work authorization program; it will continue to use the federal work authorization program throughout the contract period; and it will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit containing the above information. Further, to the extent that a subcontractor is utilized, the subcontractor's federal work authorization program user identification number and the date of authorization shall be

included in the affidavit.

- r) Any notices or communications required or permitted hereunder shall be sufficiently given if sent by Registered or Certified Mail, Return Receipt Requested, postage prepaid, addressed as follows:

As to the Consultant:
B+C Studio
1320 Ellsworth Industrial Blvd
Suite a1400
Atlanta, GA 30318
Attn: Joel Bowman

As to the City:
City of Hapeville, Georgia
3648 N. Fulton Avenue
Hapeville, Georgia 30354
Attn: City Manager

- s) The captions used in this Agreement are inserted for convenience only and shall not constitute part hereof.
- t) This Agreement shall be governed and construed in accordance with the laws of the State of Georgia. The venue for any legal action to enforce this Agreement shall be in the Superior Court of Fulton County, Georgia.
- u) If any of the provisions of this Agreement are held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF said City acting by and through its duly authorized Mayor and the Consultant, acting by and through its President have thereunto set their hands and delivered these presents in duplicate the day and year first above written.

CITY OF HAPEVILLE

Alan Hallman, Mayor

ATTEST

B+C STUDIO

Crystal Griggs-Epps, City Clerk

Joel Bowman, President