

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (herein "**Agreement**") is made and entered into as of the 13th day of July 2015 by and between the TOWN OF COLLIERVILLE, TENNESSEE, a Tennessee municipal corporation, (herein the "**TOWN**") and ELLIS AND WARD CONSULTING GROUP, INC., a Tennessee corporation (herein the "**CONSULTANT**").

WITNESSETH:

WHEREAS, the TOWN desires to retain a professional to render services in connection with actuarial and consulting services for the Town of Collierville Other Postemployment Benefit Plan (OPEB) (herein the "**Project**"), and

WHEREAS, the services of a competent professional actuarial consultant will be required for biennial actuarial valuation of the Plan through July 1, 2018 and annual preparation of disclosure information for the Town's Financial Statement through June 30, 2019 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 May 1, 2015 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 TOWN shall pay the CONSULTANT in accordance with the terms of the Proposal. If so specified in the Proposal, the TOWN shall also perform services and provide materials in accordance with the terms of the Proposal.

2.00 ADDITIONAL SERVICES

In the event the TOWN requests that the CONSULTANT perform additional services not covered by the Proposal, the CONSULTANT shall perform such additional services after the TOWN 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.

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 TOWN.

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 TOWN official holds a direct or indirect interest in this Agreement. The CONSULTANT pledges that it will notify the TOWN in writing should any TOWN 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 TOWN, or to pay anyone else for the benefit of any official or employee of the TOWN, 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 TOWN, 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 professional engineering judgment in connection with the work not disposed of by agreement between the TOWN and the CONSULTANT shall be referred to the Town Engineer, or his duly authorized representative, whose decision regarding such disputed question of professional engineering judgment 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 TOWN is greater than the TOWN'S budget for the Project, the CONSULTANT agrees to work with the TOWN, 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.

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 TOWN regarding this Project.

10.00 TERMINATION

Upon thirty (30) days written notice, with or without cause, the TOWN may terminate this Agreement. Following such termination, the TOWN 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 TOWN 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 TOWN and may be used by the TOWN and the TOWN shall not be restricted in any way in its use of such material; but if the TOWN uses such documents for any purpose other than the subject Project, the Town assumes any and all liability for such reuse of the documents.

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 TOWN. The CONSULTANT agrees further to visit the site of the work at any time when requested to do so by the TOWN.

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 TOWN 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 TOWN, except as such might not be consistent with established professional standards. The decision of the TOWN 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 TOWN 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 TOWN.

15.00 REVISIONS OF PLANS

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

15.02. Major Changes. In the event that the TOWN requests major changes in the final plans, including those caused by change orders, 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 TOWN. With respect to such revisions, the TOWN shall pay CONSULTANT additional compensation as outlined in Paragraph 2.00 herein.

16.00 DELAYS AND EXTENSIONS

16.01. Discretionary Extensions of Time. The TOWN may grant, within the TOWN'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 TOWN'S prior written consent, and no such consent should be assumed.

16.03. Cooperation with the TOWN. 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 TOWN 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 TOWN'S rights or remedies for the CONSULTANT'S default or delay, the TOWN 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 TOWN'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 TOWN.

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 TOWN before the CONSULTANT incurs any such expenses.

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 TOWN 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 TOWN 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, and the CONSULTANT will carry general liability and errors and omissions insurance to provide the above indemnification in no less than the amounts stated herein. The CONSULTANT, at its own expense, shall keep in force and at all times maintain during the term of this Agreement Comprehensive General Liability Insurance issued by a responsible insurance company and in a form acceptable to the TOWN, coverage for CONSULTANT on an occurrence basis against claims for bodily injury, death or property damage with combined single limits of not less than One Million Dollars (\$1,000,000) for Bodily Injury and Property Damage. The CONSULTANT, at its own expense, shall keep in force and at all times maintain during the term of this Agreement Professional Liability coverage in the amount of not less than One Million Dollars (\$1,000,000) for errors and omissions damages. The CONSULTANT shall provide the TOWN with Certificates of Insurance on such policies in forms acceptable to the TOWN, which Certificates will be furnished to the TOWN upon execution of this Agreement. The indemnities set forth herein shall survive the expiration or termination of this Agreement.

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, the following: 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 TOWN.

21.00 AGREEMENT CONTROLLING

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

WITNESS THE DUE EXECUTION HEREOF.

**TOWN OF COLLIERVILLE,
TENNESSEE**

By: Stan Joyner
Stan Joyner, Mayor

ATTEST:

By: Lynn Carmack
Town Clerk/Recorder

APPROVED AS TO FORM AND
CONTENT:

Mandy Bajus
Director of General Services,
in Derek Honeycutt's Absence

**ELLIS AND WARD CONSULTING
GROUP, INC.**

By: [Signature]
Its: President

CONSULTANT'S Mailing Address:
~~856 Willow Tree Circle~~ 985 Cordova Station Dr
Cordova, TN 38018 Suite 102

CONSULTANT'S Telephone Number:
(901) 756-9925

CONSULTANT'S Facsimile Number:
(901) 756-9927

EXHIBIT A

May 1, 2015

VIA EMAIL

Ms. Lori Bryant, Buyer
Purchasing Division
Town of Collierville
500 Poplar View Parkway
Collierville, TN 38017

Dear Ms. Bryant:

ACTUARIAL SERVICES

The purpose of this letter is to offer our fee quote for providing actuarial and consulting services to the Town of Collierville Postemployment Benefit Plan (OPEB). An actuarial valuation of the plan is required every two years. The next valuation is due as of July 1, 2016.

Our fee for providing the biennial actuarial valuation will be as follows:

July 1, 2016	\$12,750
July 1, 2018	\$13,750

Our fee includes the following items:

- Review of Claims History
- Actuarial Valuation
- GASB Calculations

Each year disclosure information is required for the Town's Financial Statement. Our fee for preparing this information will be \$1,750.00. This fee will be fixed through June 30, 2019. This expense will be incurred in the years the actuarial valuation is not required.

If requested, we can produce cost studies for proposed plan changes such as changes in benefits or early retirement provisions. Our fee will be based on the expected time necessary to produce the study. A firm quote will be provided in advance of starting any study.

We will also act as an additional resource should you have questions about your plan or OPEB plans in general and to keep you abreast of the changes in the tax laws that affect your plan.

Please call if you have any questions or need additional information.

Sincerely,

Ellis & Ward
Consulting Group, Inc.

A handwritten signature in black ink, appearing to read "Richard O. Ellis". The signature is written in a cursive style with a large initial "R" and "E".

Richard O. Ellis, FCA, MAAA, EA, MSPA
Consulting Actuary

ROE/kw

cc: Jane Bevill