

GGW&C INC.

GRANTWRITING & CONSULTING

"Partners For Change"

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement" herein), effective as of the date the last party executes the Agreement, is made and entered into by and between the City of Jonesboro, Arkansas ("City" herein), located at 314 W. Washington, Jonesboro, Arkansas 72403, and GGW&C, INC. (DBA Griffin Grant Writing & Consulting) ("Contractor" herein), located at 655 Redwood Highway, Suite 241, Mill Valley, CA 94941, for a period of twenty-four (24) months or until terminated in accordance with the termination provisions in this Agreement.

RECITALS

WHEREAS, City desires to engage Contractor to perform, and Contractor agrees to undertake, carry out and complete certain professional services as hereinafter set forth:

NOW, THEREFORE, the parties agree as follows:

I. Parties to the Agreement

The parties to the Agreement are:

- | | | |
|-----------|-------------|--|
| A. | City: | City of Jonesboro
314 W. Washington
Jonesboro, AR 72403 |
| B. | Contractor: | GGW&C, INC.
John A. Griffin, President
655 Redwood Highway, Suite 241
Mill Valley, CA 94941 |

II. Representatives of the Parties and Service of Notices

The representatives of the parties who are primarily responsible for the administration of this Agreement, and to whom formal notices, demands and communications shall be given are as follows:

- 1 **A.** The principal representative of City shall be:
- 2
- 3 Jimmy Mc Kinnon, CD Grants Coordinator or his designee
- 4 City of Jonesboro
- 5 314 W. Washington
- 6 P. O. Box 1845
- 7 Jonesboro, AR 72403-1845
- 8
- 9 **B.** The principal representative of Contractor shall be:
- 10
- 11 John A. Griffin, President
- 12 GGW&C, INC.
- 13 655 Redwood Highway, Suite 241
- 14 Mill Valley, CA 94941
- 15
- 16 **C.** Formal notices, demands and communications to be given hereunder by
- 17 either party shall be made in writing and may be effected by personal
- 18 delivery or mail, registered or certified, postage prepaid.
- 19
- 20 **D.** If the name of the principal representative designated to receive the
- 21 notices, demands or communications, or the address of such person, is
- 22 changed, written notice shall be given within five (5) working days of said
- 23 change. (Working days shall be defined as Monday through Friday for
- 24 purposes of this Agreement.)
- 25
- 26 **III. Objective**
- 27
- 28 **A.** Both parties agree the objective of this Agreement is that Contractor
- 29 guarantees to raise a minimum of \$1,000,000 in new grant funds for City
- 30 or refund the retainer fees noted within this Agreement.
- 31
- 32 **B.** Both parties understand and agree the Guarantee, as defined in Section VII
- 33 “Guarantee and Definitions,” is subject to City meeting its obligations as
- 34 defined in this Agreement.
- 35
- 36 **C.** Both parties agree that the professional services to be provided in this
- 37 Agreement shall be directed to the following priority areas:
- 38
- 39 1. Criminal Justice Technology and Programs;
- 40 2. Other Technology;
- 41 3. Economic Development;
- 42 4. Landfills;
- 43 5. Infrastructure;
- 44 6. Park-Land Acquisition; and
- 45 7. Other areas/departments, as mutually agreed upon by both parties.

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- D. Both parties agree that the “Scope of Services” as defined in Section V of this Agreement and Section XI, entitled “Obligations of City” are imperative and shall be used to meet the objective set forth in Section III.A of this Agreement.
- E. Both parties agree that the objective set forth in this Agreement is time sensitive and is subject to both parties meeting all obligations set forth in this Agreement.
- F. City agrees that meeting the objective is subject to providing Contractor a “Reasonable Opportunity” as defined in Section VI of this Agreement.

IV. Description of Work

- A. City hereby engages Contractor, and Contractor accepts such engagement, to perform the services set forth in the “Scope of Services” in Section V below. Contractor shall perform and complete, in a manner satisfactory to City, all work and services set forth herein. City Representative, or the Representative’s designee, shall have the right to review and inspect the work during the course of its performance at such times, as may be specified by the Representative.

V. Scope of Services

A. General Description

- 1. Contractor agrees to provide general grant writing services associated with the completion of grant applications on behalf of City. Contractor agrees to provide any and all services required in order to effectively achieve the results as required by this Agreement. Any work conducted outside the scope of this Agreement is subject to additional fees and must be accompanied by an amendment to this Agreement signed by both parties.

B. Research & Grants Alert

- 1. Contractor will conduct research on potential funding sources for City. This research will enable Contractor, in cooperation with City, to identify potential grant funds for City. Potential sources shall be disseminated via a “Federal Grants Alert.”

1 **C. Research, Assessment and Funding Plan**

- 2
- 3 1. Within thirty (30) days before or after execution of this Agreement,
- 4 Contractor agrees to facilitate and conduct an assessment meeting
- 5 for the priority areas, as defined in Section III.C of this Agreement.
- 6
- 7 2. Within forty-five (45) days of the assessment meeting or within
- 8 forty-five (45) days of the execution of this agreement, whichever
- 9 comes later, Contractor agrees to conduct research, generate and
- 10 provide City an "initial" report of potential sources to fund the
- 11 specific projects within the priority areas defined in this
- 12 Agreement.
- 13
- 14 3. City agrees to discuss this "initial" report to determine the most
- 15 efficacious funding sources for each project and priority defined in
- 16 this Agreement.
- 17
- 18 4. Contractor agrees to cull out those sources that are not efficacious
- 19 as defined from the discussion of the initial report and defined in
- 20 Section V.C.3 of this Agreement. This shall result in the
- 21 generation and delivery of a final report listing sources mutually
- 22 agreed upon and should be considered for authorization for the
- 23 duration of this Agreement, subject to the availability of, and
- 24 appropriations to, each source identified in the plan. Contractor
- 25 agrees to delivery of the final report within ten (10) working days
- 26 of the discussion as defined in Section V.C.3 of this Agreement.
- 27
- 28 5. City agrees to provide Contractor access to staff and to facilitate
- 29 the Assessment meeting described in this Section. Failure to
- 30 provide this access and/or facilitation may cause delays, resulting
- 31 in the delay of the completion of the resulting Funding Plan.
- 32

33 **D. Grants Alert**

- 34
- 35 1. Both parties understand and agree that other sources may be
- 36 identified or become available which may not be identified in the
- 37 Funding Report.
- 38
- 39 2. Contractor agrees to conduct research and compile a report of
- 40 grants, as they become available.
- 41
- 42 3. Contractor agrees to provide this information to City on a weekly
- 43 basis in the report entitled, "Federal Grants Alert."
- 44

4. City agrees to review the report and contact Contractor if any sources listed in the "Federal Grants Alert" might meet the priorities listed in Section III.C of this Agreement.
5. City must elect to receive the "Grants Alert" defined in this section via facsimile transmission or electronic mail. One copy of said alert shall be furnished to City designee each week.

E. Information Provision

1. Contractor shall provide City with a weekly written list of potential sources known as the "Federal Grants Alert," as sources are announced.
2. As soon as possible, and in all cases prior to City's authorization to prepare a proposal for funding, Contractor shall notify City whether, and the amount of, any matching funds which may or shall be required from City in order to qualify for award of funding, or which may or shall be required to complete tasks identified in the objectives of a targeted solicitation.
3. The parties together shall discuss the potential sources and identify the sources of interest to City.
4. Contractor shall have first opportunity to write the grants for all sources identified to City by Contractor based on opportunities identified in the "Federal Grants Alert."
5. Upon written request by City, Contractor shall provide copies of the Request for Proposal ("RFP") for each source identified by City, such copies to be provided within five (5) working days of said written request and subject to the availability of the Request for Proposals.

F. Conditions of RFPs

1. City understands that the RFPs contain all conditions, regulations, and requirements associated with the grant for use of any funds awarded by the funding source. City accepts responsibility for understanding the terms and conditions and complying with said terms and conditions of any potential grant award.
2. City shall review the requested RFPs within five (5) working days, or by a time mutually agreed upon by both parties, as measured from the date of receipt of RFPs by City.

1
2 **G. Authorization of Proposals Identified**
3

- 4 1. Following City's review, and prior to Contractor's preparation of
5 any proposal, City shall authorize Contractor in writing to prepare
6 and submit a proposal. City reserves the right to review and
7 approve any proposal prepared by Contractor. Approval for
8 submission shall not be unreasonably withheld.
9
10 2. The authorization of \$3,500,000 in potential grant sources under
11 this clause shall be defined as City fulfilling its obligation to
12 provide a "Reasonable Opportunity" as defined in Section VI of
13 this Agreement.
14

15 **H. Program Design for Authorized Proposals**
16

- 17 1. For any authorized proposal accepted by Contractor, Contractor
18 shall request a program design following a meeting with City to
19 develop the parameters of the grant application to be prepared by
20 Contractor.
21
22 a. At this meeting Contractor shall provide a written list of all
23 required information necessary to submit the proposal.
24
25 b. City agrees to provide requested materials within seven (7)
26 working days of the program design meeting, or by a time
27 mutually agreed upon by both parties.
28
29 (i) Any time mutually agreed upon shall be determined
30 during this meeting and initialed by a department
31 representative at the program design meeting and
32 returned to Contractor.
33
34 (ii) "Provision of information" or "provision of
35 requested materials" shall include, but are not
36 limited to, the reasonable provision of complete and
37 accurate disclosure of financial, programmatic or
38 other information requested by Contractor for
39 completion of authorized projects.
40
41 c. Where both parties agree, Contractor may pursue
42 applications with short timelines and which will require the
43 use of teleconferencing to develop program design.
44

(i) Upon faxed and initialed approval by City, Contractor shall request all requisite information in written or verbal format.

(ii) City agrees to provide all information within seven (7) working days from the date of the request or a time mutually agreed upon by both parties.

d. For projects authorized by City, failure to provide information by City within this mutually agreed upon timeline may be subject to additional fees, as described in Section IX, entitled "Delays Caused by City."

I. Grant Writing

1. Contractor shall be responsible for writing grant proposals identified by and in cooperation with City which upon approval of this Agreement by City representative and within the twenty-four (24) month duration of this Agreement, will result in at least \$1,000,000 in funded proposals allocated to the priority area(s) described in Section III.C of this Agreement.

2. Contractor agrees to review all potential opportunities with City and receive written approval to proceed from City, prior to any solicitation efforts on the part of Contractor. Approval to proceed shall not be unreasonably withheld. As information is requested from City by Contractor, in order to facilitate the solicitation process, City agrees to provide requested materials within seven (7) working days, or a time mutually agreed upon by both parties.

3. City agrees that failure to provide information which creates delays, may be subject to additional fees, as defined in Section IX of this Agreement, entitled "Delays Caused by City."

VI. Reasonable Opportunity

A. City shall provide Contractor a reasonable opportunity to solicit grant funding identified by Contractor in order to permit Contractor to attempt to achieve the objective of this Agreement.

B. "Reasonable Opportunity" means City's "acceptance" of a minimum of \$3,500,000 in grant sources offered to City by Contractor through the "Federal Grants Alert" within ten (10) months from the date of execution of this Agreement.

- 1 C. For purposes of this Section, "acceptance" shall be defined as City
2 authorizing Contractor to solicit the minimum of \$3,500,000 in potential
3 sources targeted to the priority areas defined in Section III.C of this
4 Agreement.
5
6 D. The Guarantee defined in this Agreement is subject to City's provision of
7 a reasonable opportunity as defined herein.
8

9 **VII. Guarantee and Definitions**

- 10
11 A. Contractor agrees that the performance objective of this Agreement is to
12 raise, and for City to "receive," a minimum of \$1,000,000 in "funding" for
13 the priority areas defined in this Agreement within the twenty-four (24)
14 month duration of this Agreement.
15
16 B. Contractor agrees to work in good faith and continue to solicit funding
17 until City "receives" this threshold amount of "funding".
18
19 C. For purposes of this Agreement, "received" and "funding" shall include
20 notification-of-award letters, or other equivalent notifications received
21 from funding sources solicited by Contractor under the terms of this
22 Agreement, and shall include multi-year funding awards as described in
23 Section VIII of this Agreement.
24
25 D. Both parties agree that the Guarantee is dependent on providing a
26 "Reasonable Opportunity" to Contractor, as defined in this Agreement in
27 Section VI of this Agreement.
28
29 E. Contractor agrees to guarantee City's receipt of \$1,000,000 in funding for
30 the priority area(s) defined in Section III.C of this Agreement through
31 Contractor's continued efforts, including research, targeting, writing,
32 solicitation and follow-up services until receipt of the goal amount.
33 Should Contractor fail to provide received funding within the twenty-four
34 (24) month duration of this Agreement, City may, at City's election,
35 either:
36
37 1. Compel return of the Retainer Fee drawn by Contractor noted in
38 Section VIII in this Agreement, up to the entire \$75,000; or,
39
40 2. Compel Contractor to continue to research, target, write and solicit
41 funding at no additional fee until the goal amount is received by
42 City or, at any time during this extension, City may compel return
43 of the Retainer Fee.
44

- 1 **F.** Both parties agree that, should the Reasonable Opportunity not be provided
2 to Contractor, Contractor, at his discretion may elect to either :
- 3
- 4 1. Calculate a pro-rated guarantee based on 10% of the grants
5 authorized by City during the ten (10) month period; or
- 6
- 7 2. Calculate fees for services provided during the term of the
8 Agreement, or until terminated at a rate of \$180 per documented
9 hour, not to exceed \$75,000 in fees.
- 10
- 11 **G.** If the sources authorized, as described in Section V.G of this Agreement,
12 have been funded previously through City's efforts, only funding in excess
13 of City's previous award shall be attributed to the goal amount. The value
14 of previous awards shall not include matching funds, but only those funds
15 from the granting agency(ies).
- 16
- 17 **H.** "Previous award" shall mean any funding received by City from the
18 funding source during the twelve (12) months immediately prior to the
19 date of execution of this Agreement.
- 20
- 21 **I.** Where (i) there is a mutually-identified source, (ii) City successfully has
22 received a previous award, and (iii) Contractor feels its efforts are not
23 likely to result in exceeding this previous award amount, Contractor
24 retains the right to refuse to solicit the source and agrees to permit City to
25 solicit the source outside the terms of this Agreement.
- 26

27 **VIII. Compensation, Costs, and Method of Payment**

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29 **A. Payment Schedule**

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- 31 1. A Retainer of \$75,000 shall be paid to Contractor for services
32 described herein. The payment of this Retainer shall be made upon
33 execution of this Agreement.
- 34
- 35 2. Subject to meeting the "Reasonable Opportunity" clause defined in
36 Section VI of this agreement, and in the event that Contractor is
37 not successful in attaining a minimum of \$1,000,000 in City
38 approved grant funding for City, Contractor shall reimburse the
39 \$75,000 Retainer to City within thirty (30) days of the end of the
40 term of this Agreement, or as otherwise provided for in Section XII
41 of this Agreement, entitled "Termination of Agreement."
- 42
- 43 3. Should City fail to meet "Reasonable Opportunity" as defined in
44 Section VI of this Agreement, Contractor shall be entitled to fees
45 based on a rate of \$180/hour of work performed and documented,

not to exceed \$75,000. This shall not preclude Contractors rights to "Incentive Structure" for grant(s) pending as defined in Section VIII.C, of this Agreement.

4. For purposes of determining whether the objective of \$1,000,000 in funding is attained, the calculation of receiving "funding" shall include multi-year awards. Said awards may be derived from any and all sources pursued by Contractor and pre-approved by City under the scope of this Agreement. For example, a grant award of \$200,000/year for a two-year period shall be considered an award of \$400,000, and this \$400,000 shall be applied toward the guarantee and incentive amounts under this Agreement.
5. Contractor shall maintain a record of time expended including the activities undertaken and the actual grants solicited on behalf of City.
6. City has the right, upon reasonable advance notice of five (5) days, to inspect Contractor's time logs, and records.

B. Costs and Expenses

1. Contractor will draft, copy and mail all proposals and solicitations.
 - a. All copying, faxing and mailing costs associated with the solicitations will be paid by City and will be in addition to the remuneration described in Section VIII.A above. These expenses shall be billed at Contractor's actual cost, including copies produced at \$0.07/page, faxes at \$0.25/page, postage at federal postage or Federal Express rates, and courier services provided by National Courier Services at the billed rate.
 - b. The costs shall be invoiced to City on the first of each month and the invoices shall be subject to the terms of a thirty (30) day net from the date of the invoice.
 - c. The total payment for the costs as defined in Section VIII.B.1.a above shall not exceed \$1,000.
 - d. Contractor shall be responsible for all other costs and expenses associated with activities and solicitations undertaken pursuant to this Agreement. Such cost includes, but is not limited to, all costs of equipment provided by Contractor, communications costs, all professional fees, all

1 fines, licenses, bonds or taxes required of or imposed
2 against Contractor, and any other costs of doing business.

- 3
4 e. Contractor shall retain the right to use telecommunications
5 and telecommuting tools and instruments to complete tasks
6 under this Agreement. These means include, but are not
7 limited to, electronic teleconferencing, conference calls,
8 electronic data transfer and other modalities considered
9 standard business practice.

10
11 **C. Incentive Structure**

- 12
13 1. For any funds awarded to City which result from Contractor's
14 efforts pursuant to this Agreement and which result in funds to
15 City in excess of \$1,000,000 for the priority areas defined in
16 Section III.C of this Agreement, Contractor shall receive an
17 incentive payment of all such funding awarded to City above
18 \$1,000,000 in the amount of 6% of all funding.
19
20 2. Both City and Contractor understand and acknowledge that any
21 grant funds received by City cannot and will not be used to pay
22 Contractor any fees or other amounts under this Agreement.
23
24 3. Such incentive payment shall be due and payable within thirty (30)
25 days of receipt of notification by the granting agency.
26
27 4. Subject to the termination provisions of Section XII of this
28 Agreement, all solicited funding still pending and in excess of
29 \$1,000,000 shall be subject to this incentive structure.
30
31 5. In case of termination of this Agreement no incentive payment
32 shall be due and payable unless such pending solicitation was
33 identified on a list provided to City prior to termination or
34 completion of the duration of this Agreement.

35
36 **IX. Delays Caused by City**

- 37
38 **A.** Contractor will be entitled to time and materials fees once any project is
39 authorized in writing by City and City fails to provide information in
40 accordance with the mutually agreed timeline described in Section(s) V,
41 XI, and XII of this Agreement, or if City stops projects subsequent to
42 written authorization.
43
44 **B.** The measure of time and materials fees shall be a rate of \$180/hour
45 for all work performed for which records, logs and other

accounting are provided, and shall include any outstanding expenses described in Section VIII.B of this Agreement (if applicable).

C. City accepts full and total responsibility for authorizing work to be performed by Contractor and understands the requirements of said work.

D. Any time and materials fees shall be invoiced by Contractor and City agrees to pay within a twenty (20) day net from date of receipt of said invoice.

E. Such time and materials fees pertain to individual projects authorized by City and do not pertain to termination of the entire Agreement nor preclude forfeit of the Retainer fee should the overall objective not be achieved.

X. Obligations of Contractor

A. Tools and Instruments

1. Contractor will supply all necessary tools and equipment associated with the completion of services under this Agreement. They include, but are not limited to, word processing and spreadsheet software; computer, printer, paper, supplies; telephone, fax machine, typewriter, modem, floppy disks, research materials, and any other instruments required. All information provided by City pertinent to the completion of the tasks shall be provided in both hard copy and computerized format using appropriate P/C software formats (including Word for Windows, Microsoft Access, Excel, or other mutually agreed upon formats).

B. Workers' Compensation

1. Contractor agrees to provide Workers' Compensation Insurance for its own employees and agrees to defend, hold harmless, and indemnify City for any claims including but not limited to claims arising out of injury, disability, or death of Contractor or any of Contractor's employees, subcontractors or agents in connection with any tasks or duties in completing the work described within this Agreement.
2. Contractor shall maintain Workers' Compensation insurance as described in Section XIII.M.1A.

1 **C. State and Federal Taxes**

- 2
- 3 1. Contractor shall be responsible for paying all required state and
- 4 federal taxes and insurance.
- 5
- 6 2. City will not:
- 7
- 8 a. Withhold FICA;
- 9 b. Make state or federal unemployment insurance
- 10 contributions on behalf of Contractor;
- 11 c. Withhold state or federal income tax from Contractor's
- 12 payments;
- 13 d. Make disability insurance contributions on behalf of
- 14 Contractor;
- 15 e. Obtain Workers' Compensation Insurance on behalf of
- 16 Contractor.
- 17

18 **D. Employee Benefits**

- 19
- 20 1. Contractor, as an independent Contractor, is not entitled to any
- 21 benefits typically associated with an employee such as medical,
- 22 sick leave or vacation benefits.
- 23

24 **E. Reporting of Activities**

- 25
- 26 1. Contractor agrees to provide monthly written reports to City, at
- 27 City's request, documenting all efforts undertaken that month,
- 28 including but not limited to grants targeted, actual grants and other
- 29 funding sources solicited, and grants received.
- 30

31 **XI. Obligations of City**

32

33 **A. Cooperation of City Staff, Agents, Employees and Sub-Contractors**

34

- 35 1. City agrees to comply with all reasonable requests of Contractor
- 36 and to provide access to pertinent documents necessary for
- 37 Contractor to provide services under this Agreement.
- 38
- 39 2. Such pertinent documents include but are not limited to budget
- 40 information, previously written proposals, background, research
- 41 and other source documents, demographic data, and review of
- 42 proposal drafts.
- 43
- 44 3. City understands the services offered and described in this
- 45 Agreement are time-sensitive, and City will comply with all

1 informational requests by ensuring Contractor receives all
2 reasonable requests for information within the time period, as
3 specified in this Agreement.

- 4
- 5 4. City agrees to meet all obligations defined throughout this
6 Agreement.
- 7
- 8 5. City agrees that failure to meet these obligations may result in
9 additional fees as defined in Section IX of this Agreement, entitled
10 "Delays Caused by City."
- 11
- 12 6. City agrees to provide the "Reasonable Opportunity," as defined in
13 Section VI of this Agreement.
- 14
- 15 7. City agrees that failure to provide a "Reasonable Opportunity," as
16 defined in Section VI of this Agreement, shall result in a pro-rated
17 guarantee as defined in Section VII of this Agreement.
- 18
- 19 8. City agrees that the termination of this Agreement due to a failure
20 to provide Contractor the "Reasonable Opportunity," as defined in
21 Section VI of this Agreement, or as a result of "Delays caused by
22 City," as defined in Section IX of this Agreement, shall result in
23 forfeiture of the Guarantee and Retainer fee. City agrees that
24 termination for either of these reasons may still result in incentive
25 fees as defined in Section XII of this Agreement, entitled
26 "Termination of Agreement."

27

28 **B. Place of Work**

29

- 30 1. City will at no time guarantee a place of work for the completion
31 of assigned projects. However, City may provide temporary
32 workspace for Contractor to conduct work associated with the
33 gathering of pertinent data for the completion of tasks under this
34 Agreement.
- 35

36 **XII. Termination of Agreement**

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38 **A. Termination by City**

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- 40 1. Should Contractor default in providing services under this
41 Agreement or materially breach any of its provisions, City, at its
42 option, may terminate this Agreement upon ten (10) days written
43 notice to Contractor.
- 44

2. Contractor shall have the right and opportunity to cure any such material breach within the ten (10) day period.
3. In the event of termination by default caused by Contractor, the \$75,000 retainer shall be returned to City within ten (10) days of termination by default of this Agreement.
4. Incentive fees shall be paid on City-approved applications that have already been submitted by Contractor to a granting agency with the following stipulation: Contractor must be able to prove that no default is related in any way to said pending application.

B. Termination by Contractor

1. Should City, its staff, employees, agents and/or representatives default in the performance of this Agreement or materially breach any of its provisions, Contractor, at its option, may terminate this Agreement by giving ten (10) days written notice to City.
2. City shall have the right and opportunity to cure any such material breach within the ten (10) day period.

C. Termination for Convenience

1. Both parties agree that either party may terminate this Agreement without good cause by providing a fifteen (15) day written notice to the other party.
2. In the case of any termination, under this provision, either Section (i) or Section (ii) below shall apply:

- (i) Termination for Convenience prior to submission of a City approved Grant Application

In the event this Agreement is terminated prior to Contractor's submission of a City-approved grant application to a granting agency, Contractor shall surrender and return the full \$75,000 retainer fee to City within ten (10) days of Agreement termination. City agrees to pay Contractor within ten (10) days of Agreement termination, all fees, costs and expenses incurred from the point of execution to the date of termination at a cap not to exceed \$75,000. The calculation of fees shall be calculated at a rate of \$180/hour of work documented by Contractor.

- 1 (ii) Termination for Convenience after submission of Grant
2 Application

3
4 In the event termination occurs on or after the date of
5 submission of a City approved grant application, all terms
6 and conditions regarding Contractor's compensation as
7 defined herein shall be applicable.
8

9 **D. Miscellaneous**

- 10
11 1. Both parties agree that pending applications which require
12 substantial modifications or changes by City shall preclude any
13 awards being subjected to the terms and conditions of this
14 Agreement.
15
16 2. Both parties agree and understand that "substantial modifications
17 or changes" must be requested by the funding source. The required
18 modification response must be in excess of five (5) typewritten
19 pages.
20

21 **XIII. General Provisions**

22
23 **A. Entire Agreement of the Parties**

- 24
25 1. This Agreement supersedes any and all prior proposals,
26 Agreements, understandings, and other Agreements, either oral or
27 written, between the parties regarding the rendering of services in
28 any manner whatsoever.
29
30 2. This Agreement contains all the covenants and agreements
31 between the parties and any modification of the Agreement will be
32 effective only if it is in writing and signed by both the parties.
33

34 **B. Severability**

- 35
36 1. If any provision of this Agreement is held by a court of competent
37 jurisdiction to be invalid, void or unenforceable, the remaining
38 provisions will nevertheless continue in full force without being
39 impaired or invalidated in any way.
40

41 **C. Government Documents**

- 42
43 1. Contractor agrees to file all necessary governmental documents,
44 including appropriate tax returns, reflecting its income status as an

1 independent Contractor for services rendered to City under this
2 Agreement.

- 3
4 2. Should any governmental agency audit the files of either party and
5 request information on Contractor or City, Contractor and City
6 agree to immediately furnish the requesting party with any records,
7 including tax returns, relating to the services rendered under this
8 Agreement.

9
10 **D. Non-Discrimination**

- 11
12 1. Contractor shall comply with all applicable federal, state and local
13 laws and regulations with regard to services rendered under this
14 agreement and shall not discriminate on the basis of age, ancestry,
15 color, gender, marital status, medical condition, national origin,
16 physical or mental disability, race, religion, or sexual orientation.

17
18 **E. Recommendations**

- 19
20 1. Both parties understand that Contractor may recommend vendors,
21 methodologies and other related areas during the course of this
22 Agreement. Both parties understand and agree that these
23 recommendations are based solely on the knowledge obtained
24 through Contractor experiences. In no way shall these
25 recommendations be considered as influential or having decision-
26 making authority. City accepts full responsibility for acceptance or
27 rejection of recommendations through the grant seeking and award
28 process.

29
30 **F. Independent Contractor**

- 31
32 1. All acts of Contractor, its agents, officers, subcontractors and
33 employees and all others acting on behalf of Contractor relating to
34 the performance of this Agreement, shall be performed as
35 independent Contractors and not as agents, officers, subcontractors
36 or employees of City. Contractor, by virtue of this Agreement, has
37 no authority to bind or incur any obligation on behalf of City, save
38 and except to research, target and solicit funding for City.
39 Contractor has no authority or responsibility to exercise any rights
40 or power vested in City. It is understood, by both City and
41 Contractor, that this Agreement shall not under any circumstances
42 be construed or considered to create an employer-employee
43 relationship or joint venture.
44

2. Contractor, its agents, officers, subcontractors and employees are, at all times during the terms of this Agreement, shall represent and conduct themselves as independent Contractors and not as employees of City.
3. Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to City only for the requirements and results specified in this Agreement, and, except as expressly provided in this Agreement, shall not be subjected to City's control with respect to the action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing services under this Agreement.
4. As an independent Contractor, Contractor hereby indemnifies and holds City harmless from any and all claims that may be made against City based on any contention by third party that an employer-employee relationship exists by reason of this Agreement.

G. Exclusivity

1. Contractor retains the right to provide services for others during the term of this Agreement and is not required to devote services exclusively to City.
2. City agrees not to use other outside Contractors or consultants to research, target and write grant or related funding applications for the duration of this Agreement.
3. City retains the right to use City staff to write grant proposals and pursue funding sources that City staff researched, targeted or solicited independent of this Agreement.
4. Where City and Contractor have identified potential grants directly related to funding the priority areas, City and Contractor agree that Contractor shall be provided the first opportunity to solicit these sources.
5. Where City claims to have researched, targeted or solicited funding sources, independent of Contractor's efforts pursuant to this Agreement, City accepts the burden to prove, and agrees to provide proof, to the satisfaction of Contractor that sources identified in Contractor's Federal Grants Alerts sent to City by Contractor are

sources City claims to have researched and identified independent of Contractor's Alert.

H. Materials

1. All reports, drawings, designs, graphics and other incidental work or materials furnished hereunder shall become and remain the property of City, and may be used by City without any additional cost to City.
2. If, as part of this Agreement, Contractor is required to produce data such as, but not limited to, drawings, plans, diagrams specifications, calculations, models, flow diagrams, visual aids, and other related materials, the originals of all such materials generated under this Agreement shall be delivered to City.
3. Contractor will return all copies of materials borrowed or produced under the terms of this Agreement. Contractor understands that all materials, data or information obtained from City in the performance of this Agreement shall at all times remain the property of City.
4. Contractor agrees that all materials, data and information produced or used in the execution of services associated with this Agreement may be reproduced or used outside this Agreement, for any reason, without prior written consent of City.

I. Conflict of Interest

1. Contractor warrants that it presently has no interest and shall not acquire any interest which would conflict with performance or services as defined in this Agreement. Contractor further warrants that, in performance of this Agreement, Contractor shall not employ any person having such an interest. This clause in no way prohibits Contractor from performing similar services for other Cities.
2. No member, official or employee of City shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by City, or for any amount which may become due to Contractor or successor or on any obligations under the terms of this Agreement.

1 3. Contractor warrants that it has not paid or given, and will not pay
2 or give, any third person any money or other consideration for
3 obtaining this Agreement.
4

5 4. No member, official, or employee of City shall have any personal
6 interest, direct or indirect, in this Agreement, nor shall any
7 member, official, or employee participate in any decision relating
8 to the Agreement which affects their personal interests, the
9 interests of this corporation, partnership or association in which
10 they are directly or indirectly interested.
11

12 **J. Assignment**
13

14 1. Neither this Agreement nor any portion thereof may be sub-
15 Agreemened or assigned without the express prior written consent
16 of City. City understands and agrees that Contractor uses and has
17 maintained relationships with subcontractors who perform research
18 and writing services. City in no way intends to mandate the
19 manner in which Contractor, as an independent contractor,
20 achieves the goals and outcomes set forth under this Agreement.
21

22 **K. Waiver**
23

24 1. The waiver by any party to this Agreement of a breach of any
25 provision in this Agreement shall be in writing and shall not
26 operate as, or be construed as a waiver of, any other provision or
27 subsequent breach of this Agreement unless specified in writing.
28

29 **L. Headings Not Controlling**
30

31 1. Headings used in this Agreement are for reference purposes only
32 and shall not be considered in construing this Agreement.
33

34 **M. Insurance**
35

36 1. Contractor shall provide, at its own expense, and maintain at all
37 times the following insurance, with a rating of A-VIII or better,
38 and shall furnish original certificates and amendatory
39 endorsements effecting coverage.
40

41 a. Workers' Compensation
42

43 (i) Workers' Compensation coverage shall be
44 maintained as required by law, including

1 employer's liability limits of at least \$1,000,000 per
2 occurrence.

- 3
4 (ii) The Workers' Compensation insurer shall agree to
5 waiver all rights of subrogation against City, its
6 agents, officers, employees, and volunteers for
7 losses arising from work performed by Contractor
8 for City.

9
10 b. Professional Liability Insurance

- 11
12 (i) Contractor shall, during the term of this Agreement
13 and at no expense to City, maintain professional
14 liability insurance (errors and omissions) in an
15 amount not less than \$1,000,000 for any damages
16 which may arise, directly or indirectly, out of any
17 errors and omissions committed by Contractor in its
18 performance of this Agreement.

19
20 c. Comprehensive General Liability

- 21
22 (i) Insurance with a minimum limit per occurrence of
23 \$1,000,000 for bodily injury and \$100,000 for
24 property damage, or \$2,000,000 combined single
25 limit.
26
27 (ii) This insurance shall indicate on the certificate of
28 insurance the following coverages and indicate
29 policy aggregate limit applying to: premise and
30 operations, broad form Agreemental, independent
31 contractors and subcontractors, products and
32 completed operations, and/or professional liability.

33
34 d. Automobile Liability Insurance

- 35
36 (i) Contractor shall procure and maintain, at its cost
37 and for the duration of the Agreement, motor
38 vehicle liability insurance (including non-owned
39 and hired motor vehicles) and excess liability
40 insurance against all claims for injuries against
41 person or damages to property which may arise
42 from or in connection with the operation of motor
43 vehicles by Contractor, Contractor's agents,
44 representatives, employees or subcontractors in the
45 course and scope of providing services to City.

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Liability insurance shall minimally provide for coverage in amounts of up to \$75,000 property damage, \$100,000 personal injury per person, and \$300,000 personal injury per incident. City, its officers, agents and employees, shall be named as additionally insureds by endorsement on the policy.

(ii) Indemnification

Contractor shall defend, indemnify and hold harmless the City and its officers, officials, employees and agents from and against all losses, claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recoverable against it or them by reason of any negligent or willful act, error or omission related to or arising from the use by Contractor, its agents or employees during the terms of this Agreement of an automobile while on business related to this Agreement.

N. Non-Liability of Officials and Employees of City

- 1. No member, official, or employee of City or City shall be personally liable to Contractor or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Contractor, its successors, or on any obligations under the terms of this Agreement.

O. Governing Law

- 1. This Agreement shall be governed by the laws of the State of Arkansas.

P. Hold Harmless and Indemnification

- 1. The parties agree to the following hold harmless agreement:

Contractor shall defend, indemnify and hold harmless the City, its officers, officials, employees and agents from and against all losses, claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recoverable against it or them by reason of any negligent or willful act of Contractor, its agents or employees during the term of this Agreement, whether or not there is concurrent negligence on the

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part of City, but excluding liability due to the active negligence or willful misconduct of City.

Q. Effective Date

- 1. Unless otherwise specified herein, this Agreement shall become effective as of the date set forth on which the last of the parties, whether City or Contractor, executes said Agreement.

R. Legal Proceedings/Dispute Resolution

- 1. Disputes regarding the interpretation or application of any provisions of this Agreement shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.
- 2. If any action at law or in equity is brought to enforce or interpret any provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys’ fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

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XIII. Signatures:

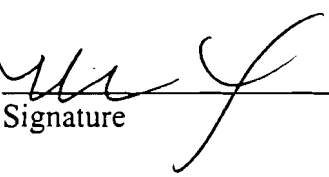
City of Jonesboro, Arkansas

By: _____

GGW&C, INC.

By: _____

Robert L. Brown, Vice-President


Signature

Date of Execution

4-29-99
Date of Execution

Attest to Legal Form:

Attest to Form:

City Counsel

City Clerk

Seal of City: