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# PROFESSIONAL SERVICE AGREEMENT BETWEEN WOOLPERT, INC AND THE CITY OF GAHANNA

## Section 1. General

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_, 20 \_\_\_\_, by and between Woolpert, Inc, whose address is 2780 Airport Drive, Suite 100, Columbus, Ohio 43219 (hereinafter referred to as "Woolpert") and the "Client" identified herein, provides for the Professional Services described under Section 3 of this Agreement.

- Client: City of Gahanna, Ohio
- Address: 200 S. Hamilton Road Gahanna, OH 43230
- Contact Person: Jeff Feltz, Water Resources Engineer
- Phone Number: 614-342-4005
- Fax Number: (614) 342-4100
- Title: City of Gahanna, Stormwater Management Program Assistance

The "Contact Person" designated above shall have the complete authority to act on behalf of the Client, including, by way of illustration and not by way of limitation, to define scope, transmit instructions, receive information, and authorize changes in Professional Services, and to negotiate fees and other changes under this Agreement.

## Section 2. General Description of Project and Project Area

The Client's project is described as follows:

The Client's project is described as follows: Provide professional consulting services assistance for the implementation of the City's NPDES Storm Water Small MS4 Phase II Program for 2011.

The project area for this Project is described as follows: City of Gahanna, OH

## Section 3. General Description of Professional Services

The Professional Services to be provided by Woolpert are generally identified as continuing and enhancing a detailed understanding of the City's NPDES Phase II program background, and providing assistance with effective implementation of the MS4 program per the recent OEPA General Permit renewal. Scope is more fully described in the "Scope of Services" (Attachment A to this Agreement), which is incorporated by this reference.

Any services beyond those identified in this Agreement shall be considered Additional Services and shall be authorized in writing by an Addendum to this Agreement executed by both parties. Email transmissions may be utilized to meet the requirement of a writing executed by both parties provided the other party receives the transmission and agrees that the terms and conditions are acceptable. Email transmissions shall only be effective for changes in the scope, compensation, or schedule. Any modifications or additions to the terms and conditions of this Agreement must be effected through a properly executed Addendum and any such changes beyond scope, compensation, or schedule included in an email transmission shall be considered void and of no effect.

**EXHIBIT A**

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## Section 4. Compensation to Be Paid to Woolpert

Compensation to be paid to Woolpert for providing the requested Services shall be as follows:

- **Unit Cost/Hourly Fee** plus reimbursable expenses in accordance with Attachment B of this Agreement, which is incorporated by this reference. The total contract amount shall not exceed \$15,000, excluding reimbursable costs.

Reimbursable expenses include direct expenses included but not limited to travel, lodging, meals, telephone and fax, copies, shipping/overnight delivery, prints, and computer time, times a multiple of 1.10. Mileage will be charged at the current IRS rate.

## Section 5. Date of Commencement and Duration

The Date of Commencement for Services provided pursuant to this Agreement shall be the date on which the Agreement is fully executed. Woolpert shall perform its services with due and reasonable diligence consistent with sound professional practice. This Agreement shall remain in effect until December 31, 2011 unless terminated as provided herein, or extended by mutual agreement in writing.

## Section 6. Terms and Conditions

**6.1 Delayed Services:** Woolpert's fees have been calculated in anticipation of orderly and continuous progress of the project. If services are disrupted or delayed for reasons beyond Woolpert's control, the termination date specified in Section 5 of this Agreement shall be modified and the fees shall be renegotiated accordingly.

**6.2 Invoice Procedures and Payment:** Woolpert shall submit invoices to the Client for Services rendered during each invoicing period which shall generally be on a monthly basis. For Services provided on a Lump Sum basis, the amount of each invoice shall be determined on the "percentage of completion method" whereby Woolpert will estimate the percentage of the Lump Sum Services accomplished during the invoicing period. For services provided on a Unit Cost/Hourly basis, invoices shall include, separately listed, any fees for Services for which time charges and/or unit costs apply for the invoicing period. Such invoices shall also separately list reimbursable expenses, if applicable. Such invoices shall be submitted not more frequently than monthly by Woolpert and shall be due and payable by the Client upon receipt.

The Client hereby acknowledges that unpaid invoices shall accrue interest at 1.5 percent per month after such invoices have been outstanding for over 30 days. If payment is not made as provided herein, the Client agrees to pay all costs of collection, including reasonable attorneys' fees, regardless of whether legal action is initiated. If an invoice remains unpaid 30 days after the date of the invoice, Woolpert may, immediately upon giving notice of its intent to do so, suspend services or terminate this Agreement and pursue its remedies for collection. Woolpert may also immediately suspend its services or terminate its agreement on any other project with the Client or an entity affiliated, related or otherwise partially controlled by the Client, and/or apply funds from one such project to this Project or any other project on which payment to Woolpert is overdue.

**6.3 Expert Witness Services:** It is understood and agreed that Woolpert's services under this Agreement do not include any participation whatsoever in any litigation. Should such services be required, a Professional Service Agreement Addendum may be negotiated between the Client and Woolpert describing the services desired and providing a basis for compensation to Woolpert.

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**6.4 Opinion of Probable Construction Cost/Cost Estimates:** The Client hereby acknowledges that Woolpert cannot warrant that opinions or estimates of probable construction or operating costs provided by Woolpert will not vary from actual costs incurred by the Client.

**6.5 Limit of Liability:** The limit of liability of Woolpert to the Client for any cause or combination of causes resulting from the Services rendered hereunder shall be, in total amount, limited to the fees paid under this Agreement.

**6.6 Construction Phase:** Woolpert shall not be responsible for or have control over construction means, methods, techniques, sequences, or procedures; or for safety precautions and programs in connection with the work. Nor shall Woolpert be responsible for any contractor's or subcontractors' failure to carry out the work in accordance with the Contract Documents or for their failure to comply with applicable laws, ordinances, rules, or regulations. Woolpert will not have any direct contractual relationship with the contractor, any subcontractors or material suppliers. Woolpert may, under a separate subcontract with the contractor, provide survey services. Woolpert shall not be bound by any term or obligation contained in any "General Condition" or other construction bidding documents unless expressly consented to by Woolpert in writing.

**6.7 Insurance:** Woolpert shall carry, on all operations hereunder, workers compensation insurance, commercial general liability insurance, professional liability insurance, and automobile liability insurance.

**6.8 Assignment/Third Parties:** Neither the Client nor Woolpert will assign or transfer its interest in this Agreement without the written consent of the other. Woolpert, however, does reserve the right to subcontract any portion of the Services. Nothing in this Agreement shall be construed as creating any rights, benefits, or causes of actions for any third party against either Woolpert or the Client.

**6.9 Suspension, Termination, Cancellation, or Abandonment:** In the event the Project identified in this Agreement is suspended, canceled, or abandoned by the Client thereby suspending, delaying, or terminating the services called for herein, Woolpert shall be given 15 days' prior written notice of such action and shall be compensated for the Services provided and reimbursable expenses incurred up to the date of suspension, cancellation, or abandonment including necessary and reasonable costs incurred thereafter. If the Client delays or suspends Woolpert's services for more than 90 days, then Woolpert may terminate this Agreement upon giving seven days' written notice. Either party may terminate this Agreement upon the other's filing for bankruptcy, insolvency, or assignment for the benefit of creditors. Except as expressly provided otherwise in Paragraph 6.2, either party may terminate this Agreement for cause upon 30 days' written notice of a substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. The party receiving such termination notice shall have the right to correct its failure within seven days of receiving said notice, or if it cannot cure the default within seven days, proceeds diligently to cure and does cure within the 30-day notice period. Pursuant to Section 5 of this Agreement, Woolpert shall not be obligated to commence services until this Agreement is fully executed. If the Client fails to execute this Agreement within 30 days of the date it is sent to the Client, Woolpert shall have the right to revise fees or revoke any proposal related to the services.

**6.10 Disputes:** If a dispute between the parties arises out of or relates to this Agreement, or the breach thereof, then the parties agree to make a good faith effort to settle the issue through direct discussion between the parties prior to having recourse to a judicial forum. It is further agreed that the parties each waive their right to indirect, special, incidental, consequential, or punitive damages. The Client agrees that Woolpert's officers, partners, agents, and employees will have no personal liability for any damages arising out of or relating to this Agreement.

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**6.11 Standard of Care:** Woolpert agrees to perform services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. **Woolpert makes no other warranties, express or implied, under this Agreement or otherwise, in connection with these Professional Services.**

**6.12 Waiver:** Any failure by Woolpert to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and Woolpert may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

**6.13 Relationship:** Woolpert is an independent contractor to the Client in performing its Services under this Agreement and is not an employee, agent, joint-venturer, or partner of the Client.

**6.14 Client Responsibilities:** The Client shall provide Woolpert all pertinent data, criteria, and information, including but not limited to design objectives and constraints, space and use requirements, operational information, budgetary limits, flexibility and expandability requirements, and any other available project data such as sketches, reports, prior designs, soil tests, surveys, and plans. Woolpert shall be entitled to rely on any and all information provided pursuant to this provision. The Client shall review Woolpert's work thoroughly and promptly and provide direction as necessary. If the Client at any time becomes aware of any defect in the work or services provided, Client shall give notice of such defect. The Client shall, within 14 days of notice of any defect in work or service, give written notice to Woolpert describing the defect and providing any costs associated with such defect. The Client waives any right to set-off or recovery of costs associated with any defective work or service unless the Client strictly complies with this provision and provides written notice as required herein. The Client shall provide access to the project site. The Client shall be responsible for payment of any governmental or other similar fees associated with permits or plan review.

**6.15 Severability:** Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect.

**6.16 Ownership/Reuse of Documents:** All plans, drawings, and other documents (including electronic files or documents) prepared or furnished by Woolpert pursuant to this Agreement are instruments of service, and Woolpert shall retain all ownership and property interests therein whether or not the project is completed. The Client may make and retain copies for information and reference in connection with the use and occupancy of the project by the Client; however, such documents are not intended or represented to be suitable for reuse by the Client. Any reuse will be at the Client's sole risk unless Woolpert, for compensation to be agreed upon, reviews and adapts such documents. The Client shall indemnify and hold Woolpert, its officers, partners, employees, agents, and lower-tier consultants harmless from all claims, damages, losses, and expenses including reasonable attorneys' fees and costs of defense arising out of or resulting from this Paragraph 6.16 or Paragraph 6.17.

**6.17 Electronic/CADD Documents:** Woolpert shall not be required to provide or deliver electronic or computer-aided design and drafting (CADD) files, unless specifically required by the Scope of Services described in Section 3 or Attachment A of this Agreement. Any electronic or CADD file that is delivered shall be considered a "convenience" to the Client and in the case of any discrepancy or difference between electronic files and hard copies of drawings or files, hard copies shall control. Due to the easily alterable nature of electronic files, Woolpert makes no warranties, either express or implied, with respect to the accuracy, completeness, merchantability, or fitness for any particular purpose, including, but not limited to, performance of electronic files in cost estimating, quantity calculating, survey layout, or other software used by the Client or any other consultant or contractor. If electronic or CADD files are provided or delivered, such files shall be developed based on Woolpert's

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standard formatting, layering, drafting and design practice, unless specifically directed otherwise by the Client prior to execution of this Agreement. The Client shall not make or permit to be made any copies or any modification to electronic media, plans, and specifications without the prior written authorization of Woolpert. Woolpert shall not be liable in the event that erroneous information is supplied by the Client or a third party, and Woolpert subsequently relies upon and incorporates that information into an electronic file, plans, specifications, or other documents.

**6.18 Addendums/Additional Services:** Services resulting from changes in the specific scope, extent, or character of the work or in the Client's needs, including but not limited to changes in size, complexity, or schedule; delays or demands by the Client, its agents, or contractors; or revision or rework of previously performed services when such services are due to causes beyond the control of Woolpert, shall be considered Additional Services, and Woolpert shall be entitled to additional compensation. Unless otherwise agreed, such Additional Services shall be performed on a Unit Cost/Hourly Fee basis. Woolpert shall not be obligated to make revisions or perform Additional Services until Woolpert's receipt of a mutually executed Addendum as set forth in Section 3.

**6.19 Environmental Hazards:** Woolpert shall have no responsibility for the discovery, presence, handling, removal, transportation, or disposal of or exposure to hazardous, toxic, or similar materials in any form at the project site. In the event Woolpert's services as identified in this Agreement include an environmental assessment, then the term "discovery" as used in this provision shall not be construed to relieve Woolpert of its contractual obligation to, in accordance with the standard of care identified herein, conduct research and/or study to "discover" such materials in connection with such services.

**6.20 Entirety of Agreement:** This Agreement embodies the entire agreement and understanding between the parties, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto, except that all terms and conditions contained in a Client purchase order or other standard or preprinted work authorization issued by the Client shall be null and void, even if such document is of later date. This Agreement shall be governed by the laws of the state where the services are performed. This Agreement includes this document and, by this reference, incorporates the following as if fully set forth herein:

- Attachment A: Scope of Services
- Attachment B: Compensation

**6.21 Notices:** Any notice required hereunder shall be sufficiently given when sent to the signatories hereunder or to the above-named contact person via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.

**6.22 Indemnification:** Woolpert agrees to indemnify and hold the Client harmless from claims, damages, and costs (including reasonable defense attorney's fees) to the extent caused by the negligence or willful misconduct of Woolpert.

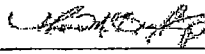
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IN WITNESS WHEREOF, this Agreement, which is subject to the terms and conditions of Sections 1 through 6 and Attachment(s), is accepted as of the date first written above.

**CITY OF GAHANNA, OHIO**  
**MAYOR**

**WOOLPERT, INC**

Signed: \_\_\_\_\_  
Typed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signed:   
Typed Name: Thomas B. Brankamp  
Title: Senior Associate  
Date: 12/15/10

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## **ATTACHMENT A: SCOPE OF SERVICES**

### **Woolpert Contact**

Daniel W. Whited, PE  
2780 Airport Drive  
Columbus, Ohio 43219  
Office: 614.827-6172  
Mobile: 614.419.1713

### **Services**

**Professional consulting services assistance for the implementation of the City's NPDES Storm Water Small MS4 Phase II Program for 2011.**

#### **Introduction:**

The City of Gahanna has requested that Woolpert provide a proposal to continue to provide assistance to the City with implementation of its NPDES Phase II program in accordance with the recent OEPA General Permit Renewal (OHC000002 – January 30, 2009). Woolpert proposes the following scope, tasks and fees for consideration by the City.

#### **Objectives:**

- Continuing and enhancing a detailed understanding of program background and future needs, ultimate goal and key success factors, and vision of implementation of the City's Phase II program.
- Assist with effective implementation of the Phase II program per the requirements of the OEPA General Permit for Small MS4s.

#### **Deliverables:**

Based on input from the Water Resources Engineer, Woolpert will continue to review and evaluate the City's program documents and supporting information related to the OEPA General Permit for Small MS4s.

Woolpert will provide assistance, as requested, to implement the program per the recent General Permit renewal. This assistance will consist of general consulting services including, but not limited to:

- Attending meetings with City staff, Franklin SWCD and others stakeholders, as requested.
- Providing assistance to assure appropriate and effective implementation of the NPDES PH II program.
- Providing consultation regarding program approach, implementation and scheduling.
- Among the program items expected to be addressed during this continued phase of work are:
  - Continued assistance with coordination of required MCM 6 activities,
  - Assisting in development of an ordinance for Post Construction BMP site maintenance

Woolpert Use Only
Reviewed As To Form: _____
Date: _____

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- responsibility,
  - Researching and reviewing the potential for Riparian Buffer language in City code or ordinance,
  - Reviewing the City's existing IDDE ordinance, and providing recommendations for potential ordinance revisions,
  - Assisting with development and completion of a revised SWMP
  - Assisting with development and completion of the City's OEPA GP Annual Report for 2010,
  - Other services as requested.

**Schedule for completion:**

As requested by the City and in compliance with permit requirements.



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## ATTACHMENT B: COMPENSATION

### Hourly Summary

#### Estimated Fees\*:

##### Woolpert Hourly Rates

Project Manager	\$203
Project Engineer	\$100
Clerical Assistant	\$ 63

\* Contract shall not exceed \$15,000.00

Woolpert Use Only Reviewed As To Form: _____ Date: _____
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