

## **PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of November 20, 2017 ("Effective Date"), by and between the CITY OF GAHANNA, an Ohio municipal corporation with an address of 200 S. Hamilton Road, Gahanna, Ohio 43230, Attn: Anthony Jones, CEcD, Director, Planning & Development (the "City"), and CALFEE STRATEGIC SOLUTIONS, LLC, an Ohio limited liability company D/B/A CALFEE ZONING, with an address of 2800 First Financial Center, 255 E. Fifth Street, Cincinnati, Ohio 45202 (the "Consultant"), on the following terms and conditions:

### **RECITALS**

A. The City is currently updating its comprehensive plan and through that process has identified an immediate need to amend certain portions of its existing Zoning Ordinance relative to zoning administration and procedures ("Zoning Procedures Project").

B. The City also desires to create a framework for a new zoning ordinance so that it is ready to commence re-writing the ordinance upon completion of the new comprehensive plan ("Zoning Framework Project") (together the Zoning Procedures Project and the Zoning Framework Project is hereinafter referred to as the "Project").

C. Consultant provides zoning consulting services to local governments and has demonstrated the qualifications necessary and desired to complete the Project.

D. The City desires to retain Consultant to provide professional consulting services, and Consultant desires to render such professional consulting services to the City, on the terms and conditions set forth herein.

NOW, THEREFORE, the parties intending to be legally bound hereby agree as follows:

### **AGREEMENT**

1. Consulting Period; Termination. Consultant will commence work on the Services (defined below) on the earlier of (a) Consultant's receipt of written notice to proceed from the City, or (b) thirty (30) days after the Effective Date of this Agreement ("Project Commencement"), and this Agreement shall be in effect for a term commencing on the Effective Date hereof and ending on the date of final completion of the Services, currently estimated to be March 1, 2018 (the "Consulting Period"). The Consulting Period may be extended upon the mutual written agreement of the City and Consultant. Notwithstanding anything contained herein to the contrary, this Agreement may be terminated upon thirty (30) days' advance written notice of either the City or Consultant. If this Agreement is terminated by the City, Consultant shall be paid for services it has performed to the date of termination. The City shall not be entitled to the recovery of any damages arising out of or related to the termination of this Agreement.

2. Consulting Services. During the Consulting Period, Consultant agrees to provide the scope of consulting services set forth on Exhibit A attached hereto and made a part hereof (the "Services"). In providing the Services, the Consultant will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Sean Suder will serve as the project manager for Consultant. Department of Planning & Development Deputy Director Michael Blackford, AICP will serve as project manager for the City. A party may rely on the representations, approvals, and other actions of the project manager of the other party. Consultant may rely upon the accuracy and completeness of information provided to it in writing by the City.

3. Consulting Fee. During the Consulting Period, the City shall pay Consultant a total consulting fee of Twenty-Eight Thousand Eight Hundred Seventy-Five and 00/100 Dollars (\$28,875.00) (the "Consulting Fee"), payable to Consultant upon the Completion of each Task within each Phase of the Scope of Services set forth on Exhibit A, attached hereto and made a part hereof. The City shall pay Consultant the Consulting Fee not later than thirty (30) days following the date of Consultant's written invoice therefor. The Consulting Fee shall include all of Consultant's expenses, including, but not limited to, Consultant's travel expenses, and Consultant shall not receive reimbursement for any business or travel expenses unless separately pre-approved by the City in writing.

4. Work Product. All documents and materials prepared pursuant to this Agreement are the property of the City, although Consultant may retain physical possession of them for the convenience of the City. The City shall have the unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Agreement. Unless otherwise specified in writing by the City, Consultant may presume that any paper, electronic, or other document delivered to the City is a public document.

5. Understanding of Relationship. Consultant acknowledges and agrees that its status at all times shall be that of an independent contractor, and that it may not, at any time, act as a representative for or on behalf of the City, for any purpose or transaction, and may not bind or otherwise obligate the City in any manner whatsoever without first obtaining the written approval of the City. In recognition of its status as an independent contractor, Consultant hereby waives any rights as an employee or deemed employee of the City. Consultant shall pay directly all taxes associated with the compensation it receives under this Agreement. Further, although consultant is affiliated with the law firm of Calfee, Halter & Griswold LLP, its principal place of business being located at 1405 East Sixth Street, Cleveland, Ohio 44114, and although some of Consultant's employees and principals are attorneys who may be separately engaged to provide legal representation in a state where they are licensed to practice law, Consultant is not a law firm and does not provide legal representation or legal services. The City understands, acknowledges and agrees that engaging or otherwise contracting with Consultant or its principals or employees does not form an attorney-client relationship and, as such, the protections of the attorney-client relationship do not apply to the provision of the services or any communication related thereto. If you are



seeking to create an attorney-client relationship, you are encouraged to contact an attorney of your choosing.

6. Insurance. During the performance of any and all Services under this Agreement, Consultant shall maintain the following insurance in full force and effect:

- (a) Commercial General Liability Insurance with a minimum combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate.
- (b) Automobile Liability Insurance, including non-owned auto coverage, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- (c) Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$1,000,000 annual aggregate.
- (d) Worker's Compensation Insurance in accordance with the statutory requirements of the Ohio Revised Code.

7. Compliance with Laws: Consultant shall comply with all relevant federal, state, and local laws and regulations, including without limitation, those governing non-discrimination in employment and the protection of the environment. Where such statutes, ordinances, plans, or regulations of any public authority having any jurisdiction over the project are in conflict, Consultant shall proceed using its best judgment only after attempting to resolve any such conflict between the authorities, and shall notify the City in a timely manner of the conflict, the nature of the attempted resolution, and a planned course of action.

8. Miscellaneous. This Agreement shall be governed by the laws of the State of Ohio. This Agreement contains the parties' entire understanding and supersedes all prior negotiations, proposals, or agreements concerning the services described herein. This Agreement may only be modified by written instrument duly executed by both parties. The rights and interests under this Agreement shall not be assigned without the prior written consent of the other party. To the extent that any provision of this Agreement is finally adjudged invalid by a court of competent jurisdiction, that provision shall be deleted or modified, as necessary, to make it enforceable, and the remaining provisions of the Agreement shall remain in full force and effect and be binding upon the parties hereto. All communications required by this Agreement may be personally delivered or mailed to the other party at the address set forth above. The address and party may be changed by written notice given as provided in this paragraph. This Agreement shall be binding on each party's successors and assigns.


9. Additional Provisions. This Agreement contains, and the parties hereby agree to, the additional scope assumptions attached hereto as Exhibit B and made a part hereof.

*[Signature Page Follows.]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the last date below.

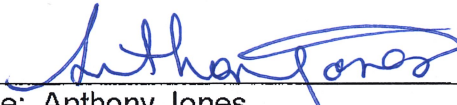
CONSULTANT:

CALFEE STRATEGIC SOLUTIONS, LLC,  
an Ohio limited liability company,  
D/B/A CALFEE ZONING

By:   
Name: SEAN S. SUDER  
Title: PRINCIPAL  
Date: 11/17/17

CITY:

CITY OF GAHANNA, an Ohio municipal corporation

By:   
Name: Anthony Jones  
Title: Director, Planning & Development  
Date: 11/20/17

CERTIFICATION OF FUNDING AVAILABILITY:

Certified Date: 11/20/17

Fund/Code: 101.343.5253

Amount: \$28,875

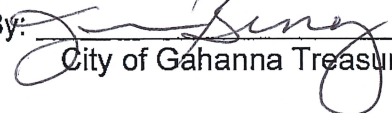
By:   
City of Gahanna Treasurer



EXHIBIT A

SCOPE OF SERVICES AND FEE SCHEDULE

**Phase I: Craft New Consolidated and Streamlined Administration and Procedures Chapter**

- Task 1.1 – Review and become familiar with relevant Zoning Code provisions.
- Task 1.2 – Prepare first draft and deliver to City project team for review.
- Task 1.3 – In-person conference to discuss first draft with City project team and revise first draft accordingly.
- Task 1.4 – Prepare second draft and deliver to City project team for review; review and revise other Zoning Code Chapters, as necessary, to reflect consolidation of administration and procedures provisions and to update cross-references; provide revisions to City project team.
- Task 1.5 – Phone conference to discuss second draft with City project team and make final revisions.
- Task 1.6 – Prepare and deliver final public review draft to City.
- Task 1.7 – Phone conference to discuss and prepare for public hearing.
- Task 1.8 – Present final review draft at public hearing.
- Task 1.9 – Make any final revisions, prepare and deliver final adoption draft.

**Total Phase I Fees: \$28,875**

**TOTAL PROJECT FEES: \$28,875.00**

## EXHIBIT B

### ADDITIONAL SCOPE ASSUMPTIONS

- (a) The City will be responsible for identifying individual members of any and all stakeholder and working groups and committees related to the Project.
- (b) The City will be responsible for coordination of all public meetings/stakeholder group meetings, including meeting times, locations, invitations, and costs associated with those meetings. Consultant will provide agendas, notices, questionnaires (if applicable), and/or any materials related to public meetings/stakeholder group meetings, to be considered as project expenses.
- (c) The City is responsible for all mailings, fees associated with mailings, and all contact with the media regarding this project and the posting of all project information to the City controlled social media accounts.
- (d) All base information including but not limited to aerial photographs, base mapping and existing development conditions, if not already in the possession of Consultant (or in need of updating), is to be made available by the City.
- (e) Local approval of the deliverables will be carried out by the City, with assistance from Consultant as described in the Scope of Services. The City will generate all formal documentation necessary for the adoption of the regulations.
- (f) Any additional meetings not anticipated in the Scope of Services will be performed on an hourly basis or by separate agreement.