

# Professional Service Agreement

**THIS PROFESSIONAL SERVICES AGREEMENT**, is entered on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Woolpert, Inc., 4454 Idea Center Boulevard, Dayton, OH 45430-1500 ("Woolpert") and City of Gahanna ("Client" or "City"), and intends to describe Woolpert's Professional Services ("Services") to be furnished for the: City of Gahanna Asset & Workorder Management System with Citizen Engagement ("Project"), all as described below:

1. **Scope:** Woolpert and Client agree the intended scope of service is limited to and described within Attachment A, as may be supplemented from time to time by separate Task Orders, which will always intend to reference and incorporate this Agreement. Client agrees that Woolpert is entitled to additional fees for any additional service Woolpert furnishes for the benefit of the Project, provided that such service is not required due to Woolpert's error or omission. Woolpert agrees to inform Client of any additional service it deems necessary, and to receive Client's written authorization before furnishing any additional service. Both parties agree to timely determine the need for any additional service, including the calculation of the additional fee in accordance with the labor schedule identified within Woolpert's proposal.

2. **Schedule:** Client acknowledges that Woolpert has developed and proposed a specific plan and project fee to furnish and complete its scope of professional services based upon the schedule described within Client's request and/or solicitation for services dated March 1, 2021. Client understands that modifications to the Project's schedule may reasonably impact Woolpert's anticipated performance, and that additional service and/or fee may be required to achieve a schedule change, which Woolpert and Client agree to mutually consider and equitably resolve.

3. **Budget:** Client acknowledges that Woolpert has developed and proposed a specific plan and project fee to furnish and complete its scope of professional services based upon the Project budget and/or Programming described within Client's request and/or solicitation for services dated March 1, 2021. Client understands that a modification to the budget may reasonably impact Woolpert's planned resource allocation, and that additional service and/or fee may be required to achieve the contemplated budget variance or value-engineered savings.

4. **Fees:** Client agrees the total compensation due Woolpert for its professional service demonstrated in Attachment A is described within Attachment B. Client agrees that Woolpert's compensation is not dependent or conditional upon Client's funding for the project. Client and Woolpert agree that Woolpert will submit monthly invoices that reasonably demonstrate the services furnished or completed, and that Client will issue payments within 30 days of any invoice. Client agrees that if it fails to make payment as provided, Woolpert may suspend its service or terminate this Agreement, without subsequent

consequence, and may suspend its services or terminate its agreement on any other project with Client, its subsidiary, or related entity. Client agrees to pay Woolpert its costs of collection, including attorneys' fees, and interest at a rate of 1.5 percent per month.

5. **Insurance:** Woolpert maintains an insurance program, at its sole cost and discretion, which includes continual coverage for both professional and commercial liability. When required by a written document, and if permitted by applicable law and/or industry regulation, Woolpert will accommodate specified terms and condition and/or afford additional insured status upon its applicable policies. Client shall be responsible for the costs of insurance required by the project that is beyond Woolpert's typical insurance program. A project-responsive copy of Woolpert's ACORD specimen is available upon Client's request.

6. **Communication:** Woolpert and Client agree to designate representatives that will be responsible for managing the project and authorized to make timely decisions that promotes and enables the successful administration, coordination, and delivery of scope and/or service described within this Agreement.

7. **Coordination:** Woolpert and Client agree to professionally collaborate with the other (inclusive of those for whom each is responsible) concerning project-based circumstances, decisions, and/or issues that affect the other's scope and/or obligations, or the project's schedule, budget or quality.

8. **Change Management:** Woolpert and Client acknowledge that project change is typical, for one reason or another. Each party agrees to cooperate with the other to reasonably determine the cause(s) of such change and to render a timely solution in the best interest of the Project, as then evaluated by the circumstances, information and belief available.

9. **Documentation:** Woolpert and Client agree to reasonably maintain and store Project documentation that adequately describes the contemporaneous milestones, circumstances, and/or decisions related to the applicable scope and/or obligations required of this Agreement.

10. **Issues:** Woolpert and Client agree to timely identify and disclose all issues reasonably discovered and/or learned that may impact the other's performance in order to allow the impacted party an opportunity to evaluate the circumstance at the earliest available time so that the Project's schedule, budget or quality is mitigated and/or remediated as timely and cost-efficiently as possible.

11. **Integration:** This Agreement, inclusive of any attachments, constitutes the entire agreement and understanding between the parties. Woolpert and Client agree to only be bound and obligated to the terms and conditions described within this Agreement.

**IN WITNESS WHEREOF**, this Agreement is accepted as of the date first written above.

**City of Gahanna:**

Signed: \_\_\_\_\_

Name: Laurie Jadwin \_\_\_\_\_

Title: Mayor \_\_\_\_\_

**Woolpert, Inc.:**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

- Attachments A, B, Terms and Conditions, are incorporated herein by reference and expressly made part of this Agreement.

- This Agreement may be amended only by a writing signed and/or acknowledged (as via email) by authorized representatives of both parties.

**Approved as to Form:**

Signed: \_\_\_\_\_

Name: Ray Malarski \_\_\_\_\_

Title: City Attorney \_\_\_\_\_



# Attachment A: Statement of Work

## Client's Representative

- Name: City of Gahanna – Kevin Schultz
- Address: 200 South Hamilton Rd – Gahanna, OH 43230
- Phone Number: 614-342-4000
- Email address: technology@gahanna.gov

## Woolpert's Contact

- Name: Woolpert – Jeff Pesler
- Address: One Esaton Oval, Suite 400 – Columbus, OH 43219
- Phone Number: 614-476-6000
- Email address: jeff.pesler@woolpert.com

## Services

See Attached



## TERMS AND CONDITIONS

Client agrees to provide Woolpert, and timely supplement, all agreements that may relate to or affect the Project's programming, design, delivery and/or administration before Woolpert begins its service, or at such time when an agreement first becomes available.

Client agrees that any self-performed work will not interfere with Woolpert's services, or impact Woolpert's standard of care. Client will timely coordinate all self-performed work to allow Woolpert's services to proceed as agreed. Client's failure to coordinate its work, timely act, and/or timely disclose all information material to the Project may constitute material non-performance under this Agreement.

Client agrees to reasonably cooperate with Woolpert, and to perform its responsibilities, obligations and work in a manner that allows Woolpert to efficiently furnish its service.

In recognition of the relative risks, rewards and benefits of the Project to both Woolpert and Client, the risks have been allocated such that Client agrees to limit Woolpert's liability for any and all claims, losses, costs, expenses and/or damages of any kind whatsoever, including attorneys' fees and defense costs, to the extent caused by Woolpert's negligent errors or omissions, such that Woolpert's total aggregate liability shall not exceed Woolpert's fee, or Twenty-Five Thousand Dollars, whichever is greater.

Woolpert will not be required to author or execute any document that concerns a condition that Woolpert has not been contracted to ascertain, over which Woolpert has no control, or which was affected by another's actions or conduct.

Client agrees that neither Woolpert nor anyone for whom it is responsible, have offered Client any fiduciary service and no fiduciary responsibility shall be owed.

Both Woolpert and Client agree that each will perform its respective service and obligations with the degree of skill ordinarily exercised by members of the same profession, practicing under the similar circumstances. Woolpert and Client expressly disclaim any guarantee or warranty, whether expressed or implied, as to any professional service furnished under this Agreement.

Client agrees that Woolpert is not responsible for nor has control over any construction means, methods, techniques, sequences, or procedures; or for safety precautions and programs in connection with the work.

Woolpert is not responsible for the discovery, presence, handling, removal, disposal, or exposure of persons to hazardous materials of any form, including mold.

Drawings, specifications, documents, and data prepared or collected by Woolpert may be used by Client solely with respect to the scope of the project described within this Agreement. Any and all City data stored on the Woolpert's servers or within the Woolpert's custody, is the sole property of the City. Woolpert, subcontractor(s), officers, agents and assigns shall not make use of, disclose, sell, copy or reproduce the City's data in any manner, or provide to any entity or person outside of the City without the express written authorization of the City.

In the event resulting Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth, Woolpert shall:

a. Incur no further financial obligations for materials, Services, or facilities under the Agreement without prior written approval of the City;

b. Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the City may direct, for orderly completion and transition; and

c. Make available to the City, at no cost, all City data stored within the system, stored on the Woolpert's servers, or within the Woolpert's custody, within fifteen (15) days of termination or City request.

In the event resulting Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth, the City shall:

Retain ownership of all data, work products, and documentation, created pursuant to the resulting Agreement.

In the event of Client's termination, suspension, or abandonment of the project, Woolpert will be compensated for services actually furnished through the date notice was received. Client's failure to make payments or substantially perform its obligations under this Agreement may be deemed material non-performance and sufficient cause for Woolpert to suspend or terminate its service, without subsequent consequence, provided Woolpert delivers written notice of Client's breach and at least 10 days have passed upon Client's receipt. Agreement shall be effective upon the date the contract is signed by both the City and Woolpert and shall expire upon completion of the Services covered by the Agreement. The resulting contract may be terminated by the City upon thirty (30) days written notice of such termination. In the event of the City's termination of this Agreement, there shall be no further obligation on the part of the City to Woolpert save and except for payment of sums due and owing for expenses and work incurred by Woolpert prior to the date of termination, minus any City incurred damages if such termination is for cause. In the event of any termination, Woolpert shall agree to cooperate in connection with any necessary transition services and shall be reimbursed for such transition services at Woolpert's standard rates. The beginning of the term of any licensing or subscription fees for software may be subject to the negotiation of the City and Woolpert, such that they do not coincide with this Agreement execution date.

Client acknowledges that additional Project costs may result due to the imperfect nature of the intended improvement and that the actual Project cost may exceed the allocated Project budget. Client agrees to prepare and plan for contingencies, clarifications and modifications that may impact both the cost, schedule and/or quality of the Project.

If Client, or anyone for whom Client is responsible, makes or permits any changes to Woolpert's final deliverables without first obtaining Woolpert's written consent, Client agrees to assume complete responsibility for the proximate consequences of any unauthorized change, and waives and releases any claim against Woolpert and those for whom Woolpert is responsible, from any liability arising directly or indirectly from any such change.

Neither Woolpert nor Client shall be liable to the other for any incidental, indirect, or consequential damage related to the project or this Agreement, which shall include, without limitation, loss of use, profits, business or income or any other consequential damage incurred. Except for one's willful misconduct, both parties agree that its employees, officers,

directors, shareholders and agents will not be personally liable for any damages arising from this Agreement.

Client agrees to promptly report to Woolpert any known or suspected defects in Woolpert's service. Client agrees to impose a similar requirement on all others under Client's control. Failure by Client or by those for whom Client is responsible to timely notify Woolpert of any such defect shall relieve Woolpert of the costs to remediate the condition(s) beyond the sum the remediation would have cost, if any, had prompt notice been provided when the defect was first discovered.

Each party agrees that it shall comply with United States import and export control and asset control laws, regulations, and orders, as they may be amended from time to time, applicable to the export or re-export of goods or services from the United State, including but not limited to software, processes, or technical data. Such regulations include without limitation the Export Administration Regulations ("EAR"), 15 C.F.R. 730-774, the International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations, 15 C.F.R. 730-774, customs laws, as well as all regulations and orders administered by the Treasury Department's Office of Foreign Assets Control. Client agrees if Woolpert is prohibited from performing under this Agreement as a result of the inability to obtain necessary approvals or permits in order to comply with the requirements imposed by such requirements, Woolpert's performance will be excused and the parties will terminate this Agreement for convenience.

Information contained in data, if any, furnished by Woolpert is dynamic and may change over time. These data are not better than the original sources from which they were derived. It is the responsibility of the data user to use the data appropriately and within the limitations of the data for which it was requested and prepared, in general, and these data in particular. Related graphics are intended to aid the data user in acquiring relevant data. Woolpert gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of any data. It is strongly recommended that any data are directly acquired from a Woolpert server, and not indirectly through other sources which may have changed the data in some way. Although data have been processed successfully upon Woolpert's computer system, no warranty, expressed or implied, is made regarding the utility of the data on another system, or for general or scientific purposes; nor shall the act of distribution constitute any such warranty. This disclaimer applies both to individual use of the data and aggregate use with other data.

This Agreement is to be governed by and construed in accordance with the laws of the State of Ohio. In the event of contract dispute, dispute proceedings will be held in the State of Ohio. Mediation, subject to written agreement of the parties, will be a mandatory first step in the event of a dispute, prior to any legal action as set forth in the contract.

Written requests for price changes in a resulting term contract after the firm price period must be submitted in writing to the City at least one-hundred eighty (180) days prior to the commencement of any extension period. Any proposed price increase will be based on the Contractor's actual cost increase only, as shown in written documentation provided to the City. All requests for price increases must be in writing, must not constitute increases in profit, and must contain data establishing or supporting the increase in cost. In connection with any Contractor request for price increases in term contracts after the firm price period, at the option of the City, (1) the request may

be granted; (2) the contract may be cancelled by either party; or (3) the contract may be extended without change with the consent of both parties. The City will accept or reject all such written requests within ninety (90) days of the date of receipt of Contractor's request for price increase or receipt of proper written documentation, whichever is later. If a price increase is approved, the City will issue an amendment to the contract specifying the date the increase will be effective. The Contractor will be required to send notice to all users of the contract. All Services and related accessories are to be billed at prices in effect at the time the service was rendered, or order was placed. All contract changes will be effective only on written agreement signed by both parties.

Any written, printed, graphic, electronic, or magnetically recorded information furnished by the City for Woolpert's use are the sole property of the City. This proprietary information includes, but is not limited to, customer requirements, customer lists, marketing information, and information concerning City employees, products, services, prices, operations, security measures, and subsidiaries. Woolpert and its employees shall keep this confidential information in the strictest confidence, and will not disclose it by any means to any person except with City approval, and then only to the extent necessary to perform the work under the contract. These confidentiality obligations also apply to Woolpert's employees, agents, and subcontractors and Woolpert shall be liable for a breach of the confidentiality obligations by any such party. On termination of the contract, Woolpert, its employees, agents, and subcontractors will promptly return any confidential information in its possession to the City.

Woolpert shall, at it's own expense, secure and maintain in effect throughout the duration of the contract, insurance of the following kinds and limits set forth in this Section. The Woolpert shall furnish a certificate of insurance and endorsements in a form acceptable to the City before starting work or within ten (10) days after the notice of award of the contract, which ever date is reached first. All insurance policies, except professional liability insurance, shall be written with insurance companies licensed to do business in the State of Ohio and having a rating of at least A-VII, according to the latest edition of the Best's Key Rating Guide; and shall include a provision preventing cancellation of the insurance policy unless thirty (30) days prior written notice is given to the City.

The following provision shall also be stated on each applicable certificate of insurance: "Should any of the above described policies be canceled before the expiration date, the issuing company shall mail thirty (30) days' written notice to the certificate holder named to the left." Woolpert shall require any of its subcontractors to secure and maintain insurance as set forth in this Section and indemnify and hold harmless the City, its officers, employees, attorneys, and volunteers.

The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law:

**A. Commercial General Liability:**

- i. Coverage to include, Broad Form Property Damage, Contractual and Personal Injury.
- ii. Limits:
  - a. General Aggregate  
\$2,000,000.00



b. Each Occurrence

\$1,000,000.00

c. Personal Injury

\$1,000,000.00

iii. Coverage for all claims arising out of the Proposer's operations or premises, anyone directly or indirectly employed by the Proposer.

**B. Professional Liability:**

i. Per Claim/Aggregate

\$5,000,000.00

ii. Coverage for all claims arising out of the Proposer's operations or premises, anyone directly or indirectly employed by the Proposer, and the Proposer's obligations under the indemnification provisions of the contract to the extent same are covered.

**C. Workers' Compensation:**

i. Workers' compensation insurance shall be in accordance with the provisions of the laws of the State of Ohio, including occupational disease provisions, for all employees who perform work pursuant to the contract, and in case work is subcontracted, the Proposer shall require each subcontractor similarly to provide Workers' Compensation Insurance. All such policies of workers' compensation insurance shall include a waiver of subrogation in favor of the City. In case employees engaged in hazardous work under the contract are not protected under said worker's compensation insurance, the Proposer shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise provided.

**D. Comprehensive Automobile Liability:**

i. Coverage to include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed, covering personal injury, bodily injury, and property damage.

ii. Limits:

a. Combined Single Limit

\$1,000,000.00

**E. Umbrella:**

i. Limits:

a. Each Occurrence/Aggregate \$5,000,000.00

**F.** The City, its officials, officers, employees, agents, and volunteers shall be named as an additional insured on all insurance policies identified herein except Workers' Compensation and Professional Liability. All such insurance shall be primary and non-contributory coverage as respects a covered loss. The Respondent shall be responsible for the payment of all premiums and deductibles for said insurance policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, agents, and employees.

Woolpert understands and agrees that, except as to Professional Liability, any insurance protection required by the contract or otherwise provided by the Respondent, shall in no way limit the Woolpert's responsibility to indemnify, keep and save harmless the City, its officers, employees, agents as herein provided.

Woolpert shall indemnify and hold and save the City and all officials, officers, agents, employees and volunteers of City harmless from and against any and all liabilities, claims, costs, or expenses resulting from this Agreement to the extent caused by any act, omission, or negligence of Respondent or any officers, agents, servants, employees, or subcontractors of Respondent, including without limitation, any liabilities, claims, costs or expenses arising directly or indirectly, from any patented or otherwise protected invention, software, intellectual property, process, article, or appliance implemented or used in the performance of the contract, including its use by the City.

During the performance of the contract, the Woolpert and all subcontractors will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, disability, age, marital status, or status with regard to public assistance. Woolpert and all subcontractors will take affirmative action to ensure that all employment practices are free of such discrimination. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Woolpert and all subcontractors agree to comply with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 and not discriminate on the basis of disability in the admission or access to, or treatment of, employment in its services, programs, or activities. Woolpert and all subcontractors agree to hold harmless and indemnify the City from costs, including but not limited to damages, attorney's fees, and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by the Contractor and any subcontractor.

Woolpert and all subcontractors will comply with all applicable local, state, and federal laws, ordinances, and regulations in the performance of the contract. The contract will comply with and be governed by all laws of the State of Ohio. Any violation shall constitute a material breach of the executed contract.

Neither Party shall be in default by reason of any failure in performance of the resulting contract if such failure is proximately caused by causes beyond their reasonable control and without the fault or negligence of said Party including, without limitation, unforeseeable acts of nature; terrorism or other acts of public enemy; war and epidemics or quarantine restrictions ("force majeure").

If either Party is delayed at any time in the progress of the work governed by the contract by force majeure, the delayed Party shall notify the other Party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the cause(s) of such delay in the notice. The notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this provision. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed Party from performing in accordance with this contract.