

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

THIS SERVICES CONTRACT, made and entered into this ____ day of July 2020, by and between the City of Asheville, a municipal corporation organized and existing under the laws of the State of North Carolina (hereinafter referred to as "City"), and Hillard Heintze LLC, a Jensen Hughes Company and an Illinois Limited Liability Company hereinafter referred to as "CONTRACTOR".

WITNESSETH:

Upon the terms and conditions hereinafter set forth, the City has requested and CONTRACTOR has agreed to furnish the City with services as set forth in this contract. The City and CONTRACTOR agree as follows:

A. TERMS AND CONDITIONS:

1. CONTRACTOR shall provide the incident analysis services as set forth more explicitly in **Exhibit A**.
2. The term of this contract shall be from [REDACTED].
3. The City will compensate the CONTRACTOR a maximum amount of \$71,500 (including the optional addition of counsel presentation for \$5,400). The CONTRACTOR shall bill the City on a monthly basis. The CONTRACTOR shall bill the City \$225 per hour, plus reimbursable expenses. If the contract exceeds the aforementioned threshold, the City must amend or renew the contract in accordance with all applicable City policies.
4. The CONTRACTOR shall provide a timekeeping record of all hours worked and description of the duties performed during the hours worked. All timesheets shall be submitted to the [REDACTED] or his or her designee for review and payment of services. These time sheets shall be submitted on a monthly basis. The City shall pay all invoices within thirty (30) days of submittal.
5. Any employees furnished by CONTRACTOR, pursuant to this contract, will be employees of CONTRACTOR, an independent contractor. CONTRACTOR will maintain complete control over the employees' conduct and will disburse all payrolls, taxes, licenses, insurances, uniforms and all other expenses incurred by CONTRACTOR in performing the terms of this contract.
6. **INSURANCE:** The CONTRACTOR agrees to keep and maintain for the duration of this Agreement including but not limited to commercial general liability, automobile liability, workers' compensation, employer's liability, and umbrella coverage with at least the minimum limits shown below. The CONTRACTOR shall furnish the City with certificates of insurance for each type of insurance described herein, with the City listed as Certificate Holder and as an additional insured on the CONTRACTOR's general liability policy and provide a waiver of subrogation on the CONTRACTOR's general liability and workers' compensation policies. In the event of bodily injury, property damage, or financial loss

caused by CONTRACTOR's negligent acts or omissions in connection with CONTRACTOR's services performed under this Agreement, the CONTRACTOR's Liability insurance shall be primary with respect to any other insurance which may be available to the City, regardless of how the "Other Insurance" provisions may read. In the event of cancellation, substantial changes or nonrenewal, the CONTRACTOR and CONTRACTOR's insurance carrier shall give the City at least thirty (30) days prior written notice. No work shall be performed until the CONTRACTOR has furnished to the City the above referenced certificates of insurance and associated endorsements, in a form suitable to the City. Upon request, the CONTRACTOR shall provide the City copies of their insurance policies.

Commercial General Liability: \$1,000,000 per occurrence

Commercial Auto Liability: \$1,000,000

Excess (Umbrella) Liability: \$1,000,000

Workers' Compensation: Statutory

Employer's Liability: \$500,000

Certificate of Insurance lists City of Asheville, PO Box 7148, Asheville, NC 28802, as Certificate Holder.

7. CONTRACTOR shall indemnify and hold harmless the City and its subsidiaries, divisions, officers, directors and employees from all liabilities, losses, costs, claims, damages, expenses, attorney fees, judgments and awards that are proximately caused by the negligent acts or omissions of the CONTRACTOR or any employee, agent or assign of the CONTRACTOR. The Contractor shall comply with the provisions of the Americans with Disabilities Act and all rules and regulations promulgated thereunder. The Contractor hereby agrees to indemnify the City from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of the Contractor, its subcontractors, agents, successors, assigns, officers or employees to comply with provisions of the ADA or the rules and regulations promulgated thereunder. **Nothing herein shall be construed as a waiver on the part of the City to any defense of any claim, including, but not limited to the defense of governmental immunity.**
8. The CONTRACTOR shall be properly licensed and skilled in his/her respective trade.
9. CONTRACTOR shall comply with all state, federal or local laws, or ordinances, codes, rules or regulations governing performance of this Agreement, including but not limited to, equal opportunity employment laws, O.S.H.A., minimum wage and hour regulation, North Carolina State Building Code regulations and immigration laws.
10. CONTRACTOR shall maintain all fiscal records relating to this Agreement in accordance with Generally Accepted Accounting Principles, and shall maintain any other records pertinent to this Agreement in a manner so as to clearly document Contractor's performance. The City shall have a right to access the fiscal and other records of CONTRACTOR that are pertinent to this Agreement to perform examinations and audits. CONTRACTOR shall retain and keep accessible all the fiscal and other records for a minimum of three (3) years following final payment and termination of this Agreement, or until the conclusion of any audit or controversy related to this Agreement, whichever is later.
11. CONTRACTOR and City (collectively, the "Parties") mutually, agree that neither will use nor reproduce in any form any confidential information or divulge all or any part of the

confidential information concerning the business practices, means or methods, resources, products or other services, officers and associates and their spouses and dependents ("Confidential Information") of the Parties to any third party, either during or after the term of this Agreement. The Parties agree to maintain the confidentiality of the proprietary materials and derivative proprietary materials related to the Confidential Information both during and after the term of this Agreement and to instruct and obligate their employees and agents to do the same. Upon termination of this Agreement, the Parties will destroy, or upon request return, all whole and partial copies and derivatives of any and all Confidential Information. These confidentiality obligations will not restrict any disclosure required by law, provided that the Party gives prompt notice to the other Party of any such request and reasonably cooperates with the other Party at its request and expense, to resist such or to obtain a protective order. In addition to the confidentiality provision above, CONTRACTOR agrees to keep confidential and not to disclose to others or to use except for providing the services hereunder, all secret, proprietary, or confidential business or technical information, whether or not patentable, owned or controlled by City, that City may disclose in conjunction with the services, or that CONTRACTOR or its employees or agents may be exposed to as a result of performing the services hereunder.

12. All rights to patents, trademarks, tradenames, logos, copyrights, trade secrets and any other intellectual property rights (hereafter, "Intellectual Property") owned by CONTRACTOR, as well as any modifications, updates or enhancements made to such Intellectual Property during the performance of the services, shall remain the exclusive property of CONTRACTOR throughout the world in perpetuity, and except as necessary for the license to use and reproduce the Intellectual Property set forth in below, CONTRACTOR does not grant City any right or license to such Intellectual Property.

All concepts, drawings, plans, designs, reports, field data, field notes, calculations, processes, graphic representations, electronic media, estimates, records, memoranda and all other documents, information, products and works prepared by or on behalf of CONTRACTOR, its employees, sub-consultants or sub-contractors for or related to the services (collectively, "Deliverables"), including all Intellectual Property rights therein and thereto, shall remain the property of CONTRACTOR. CONTRACTOR shall be deemed the sole and exclusive author and owner of the Deliverables and any derivative versions thereof and shall retain all common law, statutory and other reserved rights, including copyrights, throughout the world in perpetuity.

Upon receipt of payment for services and Deliverables, CONTRACTOR grants to City a nonexclusive, limited and irrevocable license to use and reproduce the Deliverables solely in support of the agreed upon services as specified in Exhibit A. Any other use of the Deliverables or the Intellectual Property contained therein without the prior written approval of CONTRACTOR shall be deemed a material breach of this Agreement.

Except for the license granted above, no other license or right shall be deemed granted or implied. City shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written approval of CONTRACTOR.

City shall not use, reuse or adapt the Deliverables for any other purpose other than as stated in Exhibit A, unless City obtains the prior written agreement of CONTRACTOR. Any unauthorized use, reuse or modifications of the Deliverables shall be at City's sole risk and

without liability to CONTRACTOR.

- B. TERMINATION AND MODIFICATION:** This contract may be terminated by either party, with thirty (30) days prior written notice. Notice shall be served under this contract by registered mail, certified mail or by other means. In the event of such termination, CONTRACTOR shall be entitled to compensation for services rendered through the date of termination.
- C. ENTIRE AGREEMENT:** This agreement contains the entire agreement between the parties.
- D. SEVERABILITY:** Should any provision or provisions contained in this agreement be declared by a court of competent jurisdiction to be void, unenforceable or illegal, such provision or provisions shall be severable and the remaining provisions hereof shall remain in full force and effect.
- E. GOVERNING LAW:** This contract is entered into in North Carolina and shall be construed under the statutes and laws of North Carolina.
- F. ASSIGNABILITY:** This contract is not assignable by either party without the prior written consent of the other party.
- G. REQUIREMENTS OF CITY CONTRACTS:**
1. **CONTRACTOR** shall comply with the provisions of the Americans with Disabilities Act and all rules and regulations promulgated thereunder. CONTRACTOR hereby agrees to indemnify the City from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of CONTRACTOR, its subcontractors, agents, successors, assigns, officers or employees to comply with the provisions of the ADA or the rules and regulations promulgated thereunder.
 2. **DRUG FREE WORKPLACE**
The City is a drug-free workplace employer. By executing this contract, CONTRACTOR certifies that they and their subcontractors shall comply with the City's Drug Free Workplace policy. This policy may be viewed at the following: [Drug Policy](#)
 3. **E-VERIFY EMPLOYER COMPLIANCE**
By executing this contract, the CONTRACTOR and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the NC General Statutes, certify they shall comply with E-Verify requirements to contract with governmental units. E-Verify is a Federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. E-Verify can be accessed via this link: <http://www.uscis.gov/e-verify/employers>
 4. **IRAN DIVESTMENT and ISRAEL BOYCOTT:**
City of Asheville staff are responsible for verifying that the bidder/contractor is not listed on the Iran Divestment List or the Companies Boycotting Israel Final Divestment List published by the NC State Treasurer pursuant to N.C.G.S. 147-86.60 and 147-86.82. The City shall not contract with any company or their affiliates listed on these divestment lists.

5. ASHEVILLE BUSINESS INCLUSION

The City of Asheville has adopted a Minority Business Plan to encourage participation by women and minority businesses in the award of contracts. CONTRACTOR is hereby notified that this contract is subject to the provisions of that Plan. It is the policy of the City to (1) provide minorities an equal opportunity to participate in all aspects of its contracting and procurement programs and (2) to prohibit any and all discrimination against persons or businesses in pursuit of these opportunities.

6. NON-APPROPRIATION CLAUSE

Notwithstanding any other provisions of this Agreement, if the City does not receive said funding for this Agreement from the City Council for any fiscal year applicable to this Agreement, then the City shall have the right to terminate this Agreement without penalty by giving not less than thirty (30) days' written notice documenting the lack of funding.

****See Seamless Doc for execution signatures****

Contract Signature Page

Council Resolution # _____ (if applicable)

IN WITNESS WHEREOF, each party has caused this agreement to be executed by its duly authorized official as of the day and year written below.

The Department Director by Written Approval conveys that this contract has been reviewed and presented for approval by the City of Asheville.

Department Director

DATE _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Chief Financial Officer

DATE _____

City Manager's signature, if required

City Manager

DATE _____

INDIVIDUAL PERSON / SOLE PROPRIETORSHIP SIGNATURE FORM

Signature: _____
Owner

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of the county and State, do hereby certify that
_____ personally appeared before me this day and acknowledged the due execution of
the foregoing instrument.

Witness my hand and notarial seal this _____ day of _____, 20_____

Notary Public
Printed Name: _____
My Commission Expires: _____

PARTNERSHIP SIGNATURE FORM

Signature: _____
General Partner

Name of Partnership

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public for said County and State, do hereby certify that
_____, General Partner of _____ Partnership, personally
appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal this _____ day of _____, 20_____

Notary Public
Printed Name: _____
My Commission Expires: _____

CORPORATION SIGNATURE FORM

IN WITNESS WHEREFORE, the parties hereto have made and executed this Agreement as of the day and year first above written.

(Insert Name of Corporation)

By: _____
(Insert signature and title of officer)

STATE OF _____

COUNTY OF _____

I, _____, Notary Public of the aforesaid County and State,
certify that _____ personally came before me this day and
(Insert Name of Person Signing)

acknowledged that he/she is _____ of _____
(Insert Title of Office) (Insert Name of Corporation)

corporation, and that he/she, as _____, being authorized to do so,
(Insert Title of Person Signing)
executed the foregoing on behalf of the said corporation.

Witness my hand and notarial seal this _____ day of _____, 20_____

Notary Public

Printed Name: _____

My Commission Expires: _____

LIMITED LIABILITY CORPORATION (LLC) FORM

BY: _____
Name of Limited Liability Corporation

Signature: _____
Member/Manager

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public for said County and State do hereby certify that
_____, Member/Manager of _____, a limited liability company,
personally appeared before me this day and acknowledged the due execution of the foregoing instrument on
behalf of the company.

Witness my hand and notarial seal this _____ day of _____, 20_____

Notary Public
Printed Name: _____
My Commission Expires: _____