

## PROFESSIONAL SERVICES AGREEMENT

**THIS AGREEMENT** for professional services is made by and between the City of Madison, Alabama, a municipal corporation, located at 100 Hughes Road, Madison, Alabama 35758, hereinafter referred to as "City," and ArcSpace Studio located at 304 Franklin Street, SE Huntsville, AL 35801 hereinafter referred to as "Consultant."

### WITNESS TO:

**WHEREAS**, the City of Madison has sought professional services for the Phase One assessment of the Farley-Wann house and to develop a master plan for the newly acquired property; and

**WHEREAS**, the best interests of the City and its residents will be served by retaining an experienced provider of such services; and

**WHEREAS**, Consultant is an experienced provider of the services required and is capable of providing the same in a professional, timely manner; and

**WHEREAS**, the City desires to avail itself of Consultant's unique abilities and services and Consultant desires to provide same to City;

**NOW, THEREFORE**, in consideration of mutual covenants and agreements herein set forth, the parties, intending to be legally bound, hereby agree as follows:

### **SECTION 1: SCOPE OF WORK**

- A. Pursuant to the provisions of this Agreement, Consultant will provide the following services to City: conduct a Phase One assessment of the Farley-Wann house to develop an overall master plan for the property, said services to be administered according to Consultant's proposal dated January 27, 2023 ("Attachment A"), which is attached hereto and wholly incorporated herein by this reference.
- B. Consultant shall thoroughly and proficiently perform all services using reasonable diligence and exercising the judgment, care, and skill ordinarily used by similar persons providing the same or similar services under the same or similar circumstances.
- C. Consultant shall furnish all supplies, materials, machinery, equipment, and means, except as otherwise expressly specified herein, necessary or proper to carry out the services required by this Agreement.

- D. Consultant shall perform all services in accordance with the provisions of this Agreement and shall be solely responsible for the legality, safety, efficiency, and adequacy of the services performed hereunder.
- E. Throughout the term of this Agreement, Consultant shall provide City reasonable and meaningful access via telephone and e-mail to Consultant's principals for the purpose of fulfilling the contracted-for deliverables.
- F. Any and all information provided to Consultant by City, of the type normally available for the proposed services, which has been prepared by or for others (including, but not limited to, the City, the State of Alabama, and various federal agencies) will be considered "best available information" and thus appropriate and sufficient for the services proposed herein. Consultant will not develop such original information unless specifically included in the attachments incorporated in Section 1.A.

**SECTION 2: EXPENSE STRUCTURE; OPTIONAL SERVICES & FEES**

- A. The total compensation for services rendered by Consultant pursuant to Section 1.A. shall be an amount of sixteen thousand dollars (**\$16,000.00**) with an additional contingency amount of no more than one thousand six hundred dollars (**\$1,600.00**) to be made payable to the Consultant upon approval by the City.
- B. Payments to the Consultant shall be on a monthly basis as services are rendered and invoiced to City. Consultant is solely responsible for submission of monthly detailed invoices outlining the work performed and the payment due from City, terms net thirty (30) days.
- B. All fees and expenses related to Consultant's performance are included in the total compensation set forth in Section 2.A., and Consultant shall not be compensated for any other expenses.
- C. All taxes applicable to the payments made to Consultant hereunder shall be the sole responsibility, obligation, and liability of Consultant.
- D. Payment of compensation as set forth in Section 2.A. vests complete and irrevocable ownership in the City of all paid-for deliverables created by Consultant and City shall be perpetually vested with full usage rights of the same.
- E. In the event that Consultant determines that additional services are necessary, Consultant shall notify the City with reasonable promptness and explain the facts and circumstances giving rise to the need. Consultant shall not proceed to provide any additional services until Consultant receives written authorization of City.

Any additional services will be performed according to the Consultant's fee schedule, set forth in Attachment A, and shall be subject to the budgetary restrictions of the City's duly-adopted budget for the then-current fiscal year.

### **SECTION 3: INDEMNIFICATION & INSURANCE**

A. Indemnification: Consultant agrees to hold harmless and indemnify City from and against all injuries, deaths, claims, suits, damages, losses, liabilities, judgments, costs, and expenses to the extent caused by negligent performance of professional services on the part of Consultant or its individual employees, officials, agents and representatives in the course of Consultant providing services pursuant to the instant Agreement.

To the extent allowed by law, City agrees to hold harmless and indemnify Consultant from and against all injuries, deaths, claims, suits, damages, losses, liabilities, judgments, costs, and expenses resulting from willful malfeasance, bad faith or gross negligence on the part of City or its individual employees, officials, agents and representatives in the course of receiving services from Consultant pursuant to the instant Agreement.

B. Insurance: Consultant further agrees to maintain and keep in full force and effect at all times during the term of this Agreement and any extensions thereof the following insurance policies for the duration of this agreement: Commercial General Liability Insurance, including officers, subcontractors and employees with per-project (general aggregate ) policy limits of two million dollars (\$2,000,000.00) for each occurrence and in the general aggregate for bodily injury and property damage; automobile liability covering owned and rented vehicles operated by Consultant with policy limits of one million dollars (\$1,000,000.00) each accident combined single limit for bodily injury and property damage; two million dollars (\$2,000,000.00) Products/Completed Operations Aggregate; one million dollars (\$1,000,000.00) Personal and Advertising Injury limits combined single limit or equivalent; one million dollars (\$1,000,000.00) workers' compensation; and one million dollars (\$1,000,000.00) Umbrella/Excess Liability Insurance. The Contractor shall include the City and its employees, subcontractors and servants as additional insureds in said policies except Workers Compensation and shall provide endorsements evidencing such coverage upon City's request. In addition, Consultant shall carry professional liability insurance covering Consultants negligent acts, errors, or omissions in its performance of professional services with policy limits of one million dollars (\$1,000,000.00) per claim and two million dollars (\$2,000,000.00) in the annual aggregate.

All insurance policies as required of the Consultant in this Agreement shall be written by a company or companies authorized to do business in the State of Alabama. Contractor shall promptly file the certificates of all coverage required hereunder with City within ten (10) days of the effective date of this Agreement. Each insurance policy and certificate shall provide, in effect, that the policy may not be cancelled for reasons other than the non-payment of premium by the insurer until thirty (30) days after the insurer shall have notified the City of such action in writing by sending the same to the point of contact identified in Section 10. Consultant's insurance

affording additional insured coverage as required herein shall provide primary coverage as relates to other insurance carried by the City.

**SECTION 4: COMMENCEMENT; TERM**

This Agreement shall come into effect when the authorized representatives of each party finally execute and affix their respective signatures hereto in their duly authorized capacities. In the event the signatures are affixed on different dates, the date of the latter signature shall be the date the Agreement comes into effect. This Agreement shall expire upon the City's acknowledgement of Consultant's fulfillment of the terms of the Scope of Work contained herein.

**SECTION 5: TERMINATION**

This Agreement may be terminated by either party, with or without cause, upon the provision of thirty (30) days' notice to the other party. In the event of termination, Consultant shall be entitled to payment only for services rendered as of the date of termination, and City shall be entitled to receive only that work product created by Consultant as of the date of termination.

**SECTION 6: INDEPENDENT CONTRACTOR RELATIONSHIP**

It is mutually understood and agreed, and it is the intent of the parties, that an independent contractor relationship be and is hereby established under the terms and conditions of this Agreement. It is further mutually understood and agreed that employees of Consultant are not nor shall be deemed to be employees of City and that employees of City are not nor shall they be deemed to be employees of Consultant.

**SECTION 7: EXCUSED PERFORMANCE**

In case performance of any terms or provisions hereof shall be delayed or prevented because of compliance with any law, decree or order of any governmental agency or authority, whether the same shall be of Local, State or Federal origin, or because of riots, war, public disturbances, strikes, lockouts, differences with workmen, fires, floods, acts of God or any other reason whatsoever which is not within the control of the party whose performance is interfered with and which, by the exercise of reasonable diligence, said party is unable to prevent, the party so suffering may, at its option, suspend, without liability, the performance of its obligations hereunder during the period of such suspension of performance of duties hereunder.

**SECTION 8: ASSIGNMENT**

Neither Consultant nor City may assign or transfer this Agreement or any part thereof without the express, written consent of the other party.

**SECTION 9: ENTIRE AGREEMENT: WAIVER**

This Agreement constitutes the entire Agreement between the parties with respect to the provision of the services outlined herein and there are no other or further written or oral understandings or agreements with respect thereto. No variation or modification of this Agreement and no waiver of its provisions shall be valid unless in writing and signed by duly authorized representatives of Consultant and City. This Agreement supersedes all other agreements between the parties.

**SECTION 10: NOTICES**

All notices to City shall be addressed to:

*Director  
City of Madison Planning Department  
100 Hughes Road  
Madison, Alabama 35758*

*With a copy to:  
City Attorney  
City of Madison Legal Department  
100 Hughes Road  
Madison, AL 35758*

All notices to Consultant shall be addressed to:

*Darryl Bird  
AcrSpace Studio  
Principal Architect  
304 Franklin St., SE  
Huntsville, AL 35801*

**SECTION 11: GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Alabama.

**SECTION 12: MISCELLANEOUS PROVISIONS**

- A. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable,

but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

- B. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
- C. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.
- D. In the event the terms set forth in the body of this Agreement conflict with the terms set forth in any attachment hereto, the terms set forth in the body of this Agreement shall prevail.
- E. The headings of each section are inserted for reference purposes only. Any conflict between a descriptive heading and the content of the section shall be resolved in favor of the language contained in the section.
- F. Consultant agrees to comply with all applicable Federal, State, and Local laws and regulations, including, but not limited to, those pertaining to wages and hours of employment. By signing this Agreement, the parties affirm, for the duration hereof, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

**IN WITNESS WHEREOF**, the parties hereto affirm that they have the authority to execute this Agreement on behalf of their respective entities for the entire term and have hereunto set their hands and seals on the day and year respectively noted.

**City of Madison, Alabama,  
a municipal corporation**

**Attest:**

By: \_\_\_\_\_  
Paul Finley, Mayor

\_\_\_\_\_  
Lisa D. Thomas, City Clerk-Treasurer

Date: \_\_\_\_\_

**STATE OF ALABAMA                   §**  
  **§**  
**COUNTY OF MADISON               §**

I, the undersigned Notary Public, in and for said County, in said State, hereby certify that Paul Finley and Lisa D. Thomas, whose names as Mayor and the City Clerk-Treasurer, respectively, of the City of Madison, Alabama, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of the City of Madison, Alabama, a municipal corporation.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

ArcSpace Studio  
Consultant

By: DJB

Printed: Darryl Bird

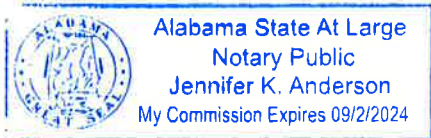
Its: Principal

Date: Feb. 20, 2023

STATE OF ALABAMA                   §  
   §  
COUNTY OF MADISON               §

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that DARRYL BIRD, whose name as PRINCIPAL for ArcSpace Studio, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said entity.

Given under my hand this the 20 day of FEBRUARY, 2023.



[Signature]  
Notary Public





**MARY BETH BROEREN, AICP**

Director of Development Services  
City of Madison, Alabama

**FARLEY-WANN HOUSE MASTER PLAN**

225 Mill Road  
Madison, Alabama 35758

**RE: PROPOSAL FOR PROFESSIONAL SERVICES**

Dear Ms. Broeren:

**PROPOSAL**

We enjoyed meeting with you and appreciate the opportunity to present this proposal for professional services related to the City of Madison’s Farley-Wann House Master Plan. This proposal is informed by data from outcomes of our Thursday, January 19<sup>th</sup>, 2023 meeting. Topographic information has not been supplied, but will be needed if this project is awarded to Arcspace Studio. It is our understanding that a survey has been completed for this property.

Our understanding of the initial scope of this project is as follows: Professional services, as outlined in the Scope of Architect’s Work section, pertaining to the existing historic residence on City of Madison’s property, located at 225 Mill Road. The house is two stories and contains approximately 2,500 square feet of heated and enclosed area. We understand services requested include evaluation and restoration of the home to the timeframe between 1920-40s for use as a museum and to develop a master plan of the surrounding property to accommodate the museum use. The materials and systems are to be conventional to residential construction.

We will act with due diligence to complete the work in compliance with a mutually agreed-upon and reasonable schedule. To the greatest extent possible, both the Owner and the Architect should agree to make themselves readily available for necessary consultation.

**SCOPE OF ARCHITECT’S WORK**

This scope of work assumes what we feel is an appropriate level of service based on our understanding of your wants and needs. A more detailed explanation of the scope of the Architect’s work for this project follows:

**RECORD DRAWINGS**

*Documenting existing conditions*

- Visit the site and existing house to obtain existing measurements and photographs
- Prepare record drawings in the form of floor plans and elevations.

**MASTER PLAN**

*Information gathering, analysis, and design*

- Meet with the Owner to ascertain initial project requirements and scope.
- Analyze site and its surrounding context.
- Develop program requirements.
- Prepare Master Plan.
- Meet with client, Madison Station Historic Preservation Commission and Madison Station Historical Preservation Society for feedback.
- Obtain feedback from City Council



304 Franklin Street SE  
Huntsville, AL 35801



256.536.1160  
256.694.3512



bird@arcspacestudio.com  
www.arcspacestudio.com

- Update Master Plan based on feedback from meetings.

#### STRUCTURAL EVALUATION *Evaluation of existing structure*

- Structural Engineer to evaluate existing house.
- Prepare outline document of structural items that need to be addressed.

#### **PROFESSIONAL FEE BASIS**

For the Record Drawings, we propose an hourly basis of compensation with a Not To Exceed amount of \$4,000, based on the hourly rates stated below.

For the Masterplan, we propose an hourly basis of compensation. We expect the cost will be approximately \$10,000 based on design time, meetings, and subsequent revisions.

For the Structural Evaluation and the outline document, we propose a fixed fee of \$2,000.

Additional services, requested by the Owner and agreed to by the Architect, shall be negotiated or performed based on hourly rates.

#### **HOURLY RATES**

For work performed on an hourly basis, the following rates shall apply:

- |                                  |               |
|----------------------------------|---------------|
| • Principal Architect            | \$175.00/Hour |
| • Staff Architect                | \$115.00/Hour |
| • Senior Architectural Associate | \$105.00/Hour |
| • Architectural Associate        | \$ 95.00/Hour |
| • Administrative Manager         | \$ 85.00/Hour |

#### **PAYMENT TERMS**

Invoices will be prepared and emailed at the end of each project phase. Invoices are past due after 30 days at which time interest may be charged at the current prevailing rate.

Reimbursable expenses, plus a 10% handling fee, will be invoiced as incurred. Reimbursable expenses include boundary surveys, geotechnical investigations and reports, fees incurred for required municipal approval, execution of contracts and standard forms, reproduction cost of construction documents, freight and shipping, and the like.

#### **OWNERSHIP OF DOCUMENTS**

The Architect and the Architect's Consultants shall be deemed the authors and owners of their respective Instruments of Service, including drawings and specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Images related to the project may be used for websites and social media posts, as well as submitted for design competitions. In such cases, the Owner's name will not be displayed without permission.

Upon execution of this Agreement, the Architect grants to the Owner, a license to use the Architect's Instruments of Service solely and exclusively for the project.



Sincerely,



**DARRYL BIRD**  
Principal Architect

**ACCEPTANCE**

To approve this proposal, please sign and date below, initial all of the preceding pages, and return to us for our files. We appreciate the opportunity to offer this proposal and look forward to the successful completion of the project.

SIGNATURE:

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PRINT NAME:

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DATE:

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