

LETTER OF ENGAGEMENT

TO: Sharon Hanson, City Administrator

FROM: Don Lifto, Director

DATE: May 20, 2021

SUBJECT: Engagement to Conduct Community Survey

This letter of engagement is to confirm our understanding of the basis upon which “Baker Tilly US, LLP” (Baker Tilly) and its affiliates are being engaged by Client (the “Client”) to assist the Client with advisory services.

Summary of Need

The City of Marshall desires to collect community feedback in general and specifically related to planning related to potential future projects funded with a voter approved sales tax.

Proposed Services

Baker Tilly will plan, design, administer, interpret and summarize a scientific, random-sample survey to measure constituent perceptions about the City, subject to the terms and conditions of this proposal letter (hereinafter referred to as “Statement of Work”) and the enclosed terms and conditions, which are incorporated into the Statement of Work as if fully set forth herein. The parameters of the survey will be 300 random-sample phone interviews of registered voters, controlled for key demography, and a 35 – item questionnaire, producing a margin error of approximately +/- 5.50%.at the 95th confidence level. Two of the 35 questions can be open-ended. Multi-modal data collection strategies (i.e., text and/or email invitations) may be used as appropriate to reach particular demographic groups. Interviews will be conducted in English. Baker Tilly will acquire registered voter and demographic databases needed for the project.

Deliverables on the survey project include a detailed summary of survey results by demography, a PowerPoint summary of key findings, and a summary of open-ended responses (if open-ended questions are used in questionnaire). All summaries will be provided to the client in PDF format for duplication by the City as needed.

Delivery of Services

The delivery of services will be coordinated by Don Lifto with support from Matt Stark, Terri Heaton and other professional staff at Baker Tilly as needed depending on the expertise and resources required by the client. Most survey projects take 6 – 7 weeks to complete once the final questionnaire is developed and assuming no unforeseen scheduling issues with the professional call center. Final reports will be presented to the administration and/or city council. The report of open-ended responses generally takes 7 – 10 additional days to complete after the initial summary report is done.

Project Cost

The professional fee for the project will be \$21,500, which is inclusive of time and mileage costs for one meeting in Marshall to present survey results if not done remotely. Additional meetings requested by the client will be billed at Baker Tilly’s normal hourly rates plus travel. Forty percent of the total fee for the survey will be billed when the contract is signed and the balance after all work is completed.

Other Services

Additional services, if requested by the City will be provided on a quotation and approval basis under the terms of this agreement.

Approval

The signatures below constitute approval of the engagement as summarized above, acceptance of the standard business terms below, and acknowledgement of receipt of disclosures in Appendix A.

Name: _____ Date: _____
(On Behalf of Client)

Name: _____ Date: _____
(On Behalf of “Baker Tilly US, LLP”)

Ownership of IP

Unless otherwise stated in a specific Scope Appendix, subject to Baker Tilly’s rights in Baker Tilly’s Knowledge (as defined below), Client shall own all, intellectual property rights in the deliverables developed under the applicable SOW (“Deliverables”). Notwithstanding the foregoing, Baker Tilly will maintain all ownership right, title and interest to all of Baker Tilly s Knowledge. For purposes of this Agreement “Baker Tilly s Knowledge” means Baker Tilly s proprietary programs, modules, products, inventions, designs, data, or other information, including all copyright, patent, trademark and other intellectual property rights related thereto, that are (1) owned or developed by Contractor prior to the Effective Date of this Agreement (“Baker Tilly’s Preexisting Knowledge”) (2) developed or obtained by Baker Tilly after the Effective Date, that are reusable from client to client and project to project, where Client has not paid for such development; and (3) extensions, enhancements, or modifications of Baker Tilly’s Preexisting Knowledge which do not include or incorporate Client’s confidential information. To the extent that any Baker Tilly Knowledge is incorporated into the Deliverables, Baker Tilly grants to Client a non-exclusive, paid up, perpetual royalty-free worldwide license to use such Baker Tilly Knowledge in connection with the Deliverables, and for no other purpose without the prior written consent of Baker Tilly.

Timing and Fees

Specific services will commence upon execution and return of a Scope Appendix to this Engagement Letter and our professional fees will be based on the rates outlined in such Scope Appendix.

Unless otherwise stated, in addition to the fees described in a Scope Appendix the Client will pay all of Baker Tilly’s reasonable out-of-pocket expenses incurred in connection with the engagement. All out of pocket costs will be passed through at cost and will be in addition to the professional fee.

Dispute Resolution

Except for disputes related to confidentiality or intellectual property rights, all disputes and controversies between the parties hereto of every kind and nature arising out of or in connection with this Engagement Letter as to the existence, construction, validity, interpretation or meaning, performance, nonperformance, enforcement, operation, breach, continuation, or termination of this Agreement shall be resolved as set forth in this Section 8 using the following procedure: In the unlikely event that differences concerning the Services or fees should arise that are not resolved by mutual agreement, both parties agree to attempt in good faith to settle the dispute by engaging in mediation administered by the American Arbitration Association under its mediation rules for professional accounting and related services disputes before resorting to litigation or any other dispute-resolution procedure. Each party shall bear their own expenses from mediation and the fees and expenses of the mediator shall be shared equally by the parties. If the dispute is not resolved by mediation, then the parties agree to expressly waive trial by jury in any judicial proceeding involving directly or indirectly, and matter whether sounding in tort, contract, or otherwise) in any way arising out of, related to, or connected with this Agreement or the relationship of the parties established hereunder.

Because a breach of any the provisions of this Engagement Letter concerning confidentiality or intellectual property rights will irreparably harm the non-breaching party, Client and Baker Tilly agree that if a party breaches any of its obligations thereunder, the non-breaching party shall, without limiting its other rights or remedies, be entitled to seek equitable relief (including, but not limited to, injunctive relief) to enforce its rights thereunder, including without limitation protection of its proprietary rights. The parties agree that the parties need not invoke the mediation procedures set forth in this Section 7 in order to seek injunctive or declaratory relief.

Limitation on Damages

To the extent allowed under applicable law, the aggregate liability (including attorney's fees and all other costs) of either party and its present or former partners, principals, agents or employees to the other party related to the services performed under a SOW shall not exceed the fees paid to Baker Tilly under the SOW to which the claim relates, except to the extent finally determined to have resulted from the gross negligence, willful misconduct or fraudulent behavior of the at-fault party.. Additionally, in no event shall either party be liable for any lost profits, lost business opportunity, lost data, consequential, special, incidental, exemplary or punitive damages, delays or interruptions arising out of or related to this Engagement Letter even if the other party has been advised of the possibility of such damages.

Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Engagement Letter are material bargained for bases of this Engagement Letter and that they have been taken into account and reflected in determining the consideration to be given by each party under this Engagement Letter and in the decision by each party to enter into this Engagement Letter.

The terms of this section shall apply regardless of the nature of any claim asserted (including, but not limited to, contract, tort or any form of negligence, whether of you, Baker Tilly or others), but these terms shall not apply to the extent finally determined to be contrary to the applicable law or regulation. These terms shall also continue to apply after any termination of this Engagement Letter.

You accept and acknowledge that any legal proceedings arising from or in conjunction with the services provided under this Engagement Letter must be commenced within twelve (12) months after the performance of the services for which the action is brought, without consideration as to the time of discovery of any claim.

Other Matters

In the event Baker Tilly is requested by the Client; or required by government regulation, subpoena, or other legal process to produce our engagement working papers or its personnel as witnesses with respect to its Services rendered for the Client, so long as Baker Tilly is not a party to the proceeding in which the information is sought, Client will reimburse Baker Tilly for its professional time and expenses, as well as the fees and legal expenses incurred in responding to such a request.

Neither this Engagement Letter, any claim, nor any rights or licenses granted hereunder may be assigned, delegated, or subcontracted by either party without the 'written consent of the other part. Either party may assign and transfer this Engagement Letter to any successor that acquires all or substantially all of the business or assets of such party by way of merger, consolidation, other business reorganization, or the sale of interest or assets, provided that the party notifies the other party in writing of such assignment and the successor agrees in writing to be bound by the terms and conditions of this Engagement Letter.

In the event that any provision of this Engagement Letter or statement of work contained in a Scope Appendix hereto is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Engagement Letter or statement of work did not contain the particular provisions held to be unenforceable. The unenforceable provisions shall be replaced by mutually acceptable provisions which, being valid, legal and enforceable, come

closest to the intention of the parties underlying the invalid or unenforceable provision. If the Services should become subject to the independence rules of the U.S. Securities and Exchange Commission with respect to Client, such that any provision of this Engagement Letter would impair Baker Tilly's independence under its rules, such provision(s) shall be of noeffect.

Termination

Both the Client and the Baker Tilly have the right to terminate this Engagement Letter or any work being done under an individual Scope Appendix at any time after reasonable advance written notice. On termination, all fees and charges incurred prior to termination shall be paid promptly. Unless otherwise agreed to by the Client and Baker Tilly, the scope of services provided in a Scope Appendix will terminate 60 days after completion of the services in such Appendix.

Important Disclosure

Incorporated as Attachment A and part of this Engagement Letter are important disclosures. These include disclosures that apply generally and those that are applicable in the event Baker Tilly is engaged to provide municipal advisory services.

This Engagement Letter, including the attached Disclosures as updated from time to time, comprises the complete and exclusive statement of the agreement between the parties, superseding all proposals, oral or written, and all other communications between the parties. If any provision of this Engagement Letter is determined to be unenforceable, all other provisions shall remain in force. Both parties acknowledge that work performed pursuant to the Engagement Letter will be done through Scope Appendices executed and made a part of this document.

Any rights and duties of the parties that by their nature extend beyond the expiration or termination of this Engagement Letter shall survive the expiration or termination of this Engagement Letter or any statement of work contained in a Scope Appendix hereto
