

To: Honorable Mayor and City Council Members
From: Steven Krokoff, City Manager ^{DocuSigned by:}
Date: Submitted on August 17, 2023 ^{Steven Krokoff} for the August 21, 2023 Regular Council Meeting
Agenda Item: Consideration of a Resolution of the City of Milton, Georgia Authorizing Issuance of Seven-Day Notice of Termination of Consulting Contract with Vernetta Keith Nuriddin and Termination of Said Contract and Approving Consulting Contract with Lavania White

Department Recommendation:

Approve the resolution as submitted.

Executive Summary:

This resolution authorizes the City to terminate the consulting agreement with Ms. Nuriddin following the necessary issuance of a seven-day notice of termination. Furthermore, it approves and authorizes the Mayor to sign a consulting arrangement with Ms. Lavania White, who brings with her more than a decade of expertise as a poll worker in Fulton County. Ms. White's roles have ranged from poll clerk to poll manager. Having already contributed significantly to our election preparations, we are excited to formalize this consulting arrangement with Ms. White as our consultant.

Funding and Fiscal Impact:

The fiscal impact will be approximately \$12,500 for Ms. White's agreement.

Legal Review:

Ken Jarrard, Jarrard & Davis, LLP – August 17, 2023

Concurrent Review:

None

Attachments:

1. Resolution
2. Termination Letter
3. PSA for Consultant

RESOLUTION OF THE CITY OF MILTON, GEORGIA
AUTHORIZING ISSUANCE OF SEVEN-DAY NOTICE OF TERMINATION OF
CONSULTING CONTRACT WITH VERNETTA KEITH NURIDDIN AND
TERMINATION OF SAID CONTRACT AND APPROVING CONSULTING
CONTRACT WITH LAVANIA WHITE

WHEREAS, the City of Milton (“City”) is a duly authorized municipal corporation with all the powers vested in such municipalities by the Georgia Constitution, general law, and its City Charter;

WHEREAS, the City is currently undertaking to conduct its own 2023 municipal election;

WHEREAS, to that end, on June 5, 2023, the City retained the services of Vernetta Nuriddin to act as an independent election consultant/contractor via a Professional Services Agreement (“Nuriddin Contract”) to aid the City Election Superintendent;

WHEREAS, the City wishes to terminate the Nuriddin Contract under Section VI(A), for convenience;

WHEREAS, the City wishes to approve an election consultant contract with Lavania White (“White Contract”); and,

WHEREAS, the City otherwise authorizes City staff and the City attorney to issue any required notices and expend any required or necessary fees or funds to fulfill the objectives of this Resolution and the City.

NOW, THEREFORE BE IT RESOLVED, the Mayor and Council of the City of Milton, Georgia, that the following is authorized, directed, and approved:

1. The City hereby directs that the seven (7) calendar day notice of termination of the Nuriddin Contract be issued in a form substantially in accord with that attached hereto as Exhibit A;
2. That, following the seventh (7th) calendar day of that notice being received, the Nuriddin Contract shall stand terminated;
3. That the City hereby approves the White Contract (Exhibit B); and
4. City staff and the City attorney are hereby authorized to undertake any additional tasks, functions, or actions, to include any necessary or appropriate expenditures of funds or fees, to fulfill the objectives of this Resolution.

SO RESOLVED, this ____ day of August, 2023.

Peyton Jamison, Mayor

Attest:

Tammy Lowit, City Clerk

Exhibit

VIA OVERNIGHT DELIVERY

Vernetta Keith Nuriddin
[REDACTED]
[REDACTED]

Re: 7-day notice of termination of Professional Services Agreement

Ms. Nuriddin:

On August 21, 2023, the City Council authorized issuance of the 7-day notice of termination letter regarding your Professional Services Agreement (“Agreement”) with the City. Termination is for convenience pursuant to Section VI(A) of the Agreement. Termination shall automatically occur *following* the seventh (7th) calendar day of your receipt of this notice. Under Section VI(D), the City is committed to ensuring full payment to you for expenses incurred prior to the date of termination. Please provide documentation of any expenses at your earliest convenience.

The City of Milton requires adherence to Section VI(E), following termination.

Thank you for your service. Best of luck in future endeavors.

[Signature]



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20____ (the "Effective Date"), by and between the **CITY OF MILTON, GEORGIA**, a municipal corporation of the State of Georgia, acting by and through its governing authority, the Mayor and City Council (hereinafter referred to as the "City"), and **LAVANIA WHITE**, a Georgia individual/sole proprietor, (hereinafter referred to as the "Consultant"), collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, City desires to retain Consultant to provide certain services in the completion of a Project (defined below); and

WHEREAS, City finds that specialized knowledge, skills, and training are necessary to perform the Work (defined below) contemplated under this Agreement; and

WHEREAS, Consultant has represented that it is qualified by training and experience to perform the Work; and

WHEREAS, Consultant desires to perform the Work as set forth in this Agreement under the terms and conditions provided in this Agreement; and

WHEREAS, the public interest will be served by this Agreement; and

WHEREAS, Consultant has familiarized herself with the nature and extent of the Agreement, the Project, and the Work, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of Work.

NOW, THEREFORE, for and in consideration of the mutual promises, the public purposes, and the acknowledgements and agreements contained herein, and other good and adequate consideration, the sufficiency of which is hereby acknowledged, the Parties do mutually agree as follows:

I. SCOPE OF SERVICES AND TERMINATION DATE

A. **Agreement.** The Agreement shall consist of this Professional Services Agreement and each of the Exhibits hereto, which are incorporated herein by reference, including:

Exhibit “A” – Scope of Work

Exhibit “B” – Certificate of Insurance

Exhibit “C” – *Reserved*

Exhibit “D” – Contractor Affidavit

Exhibit “E” – *Reserved*

Exhibit “F” – *Reserved*

B. **Project Description.** The “Project” at issue in this Agreement is generally described as: provide consulting services for city elections and assist Milton’s Election Superintendent with preparations for conducting the City’s general election in November 2023 and subsequent run-off election, if needed and terminates the day following the deadline for County Certification of Election Returns for the November Municipal General Election per O.C.G.A. §21-2-493(k).

C. **The Work.** The Work to be completed under this Agreement (the “Work”) may include, but shall not be limited to, the work described in the Scope of Work provided in **Exhibit “A”**, attached hereto and incorporated herein by reference. Unless otherwise stated in **Exhibit “A”**, the Work includes all material, labor, insurance, tools, equipment, machinery, water, heat, utilities, transportation, facilities, services and any other miscellaneous items and work necessary to complete the Work. Some details necessary for proper execution and completion of the Work may not be specifically described in the Scope of Work, but they are a requirement of the Work if they are a usual and customary component of the contemplated services or are otherwise necessary for proper completion of the Work.

D. **Schedule, Completion Date, and Term of Agreement.** Consultant understands that time is of the essence of this Agreement and warrants and represents that it will perform the Work in a prompt and timely manner, which shall not impose delays on the progress of the Work. The term of this Agreement (“Term”) shall commence as of the Effective Date, and the Work shall be completed, and the Agreement shall terminate, on or before December 31, 2023 (provided that certain obligations will survive termination/expiration of this Agreement). If the Term of this Agreement is longer than one year, the Parties agree that this Agreement, as required by O.C.G.A. § 36-60-13, shall terminate absolutely and without further obligation on the part of City on December 31 each calendar year of the Term, and further, that this Agreement shall automatically renew on January 1 of each subsequent calendar year absent City’s provision of written notice of non-renewal to Consultant at least five (5) days prior to the end of the then current calendar year. Title to any supplies, materials, equipment, or other personal property shall remain in Consultant until fully paid for by City.

II. WORK CHANGES

A. **Change Order Defined.** A “Change Order” means a written modification of the Agreement, signed by representatives of City and Consultant with appropriate authorization.

B. Right to Order Changes. City reserves the right to order changes in the Work to be performed under this Agreement by altering, adding to, or deducting from the Work. All such changes shall be incorporated in written Change Orders and executed by Consultant and City. Such Change Orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the Parties cannot reach an agreement on the terms for performing the changed work within a reasonable time to avoid delay or other unfavorable impacts as determined by City in its sole discretion, City shall have the right to determine reasonable terms, and Consultant shall proceed with the changed work.

B. Change Order Requirement. Any work added to the scope of this Agreement by a Change Order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized, unless contained in a written Change Order duly executed on behalf of City and Consultant.

C. Authority to Execute Change Order. The City Manager has authority to execute, without further action of the Mayor or City Council, any number of Change Orders so long as their total effect does not materially alter the terms of this Agreement or materially increase the Maximum Contract Price, as set forth in Section III(B) below. Any such Change Orders materially altering the terms of this Agreement, or any Change Order affecting the price where the Maximum Contract Price (as amended) is in excess of \$50,000, must be approved by resolution of the Mayor and City Council. Amendments shall not result in a variance in price exceeding ten percent of the original contract amount.

III. COMPENSATION AND METHOD OF PAYMENT

A. Payment Terms. City agrees to pay Consultant for the Work performed and costs incurred by Consultant upon certification by City that the Work was actually performed and costs actually incurred in accordance with the Agreement. Compensation for Work performed and, if applicable, reimbursement for costs incurred shall be paid to Consultant upon City's receipt and approval of invoices, setting forth in detail the services performed and costs incurred, along with all supporting documents requested by City to process the invoice. Invoices shall be submitted on a monthly basis, and such invoices shall reflect costs incurred versus costs budgeted. Any material deviations in tests or inspections performed, or times or locations required to complete such tests or inspections, and like deviations from the Work described in this Agreement shall be clearly communicated to City *before charges are incurred* and shall be handled through Change Orders as described in Section II above. City shall pay Consultant within thirty (30) days after approval of the invoice by City staff.

B. Maximum Contract Price. The total amount paid under this Agreement as compensation for Work performed and reimbursement for costs incurred shall not, in any case, exceed **TWELVE-THOUSAND FIVE HUNDRED DOLLARS (\$12,500.00)** (the "Maximum Contract Price"), except as outlined in Section II(C) above, and Consultant represents that this amount is sufficient to perform all of the Work set forth in and contemplated by this Agreement. The compensation for Work performed shall be based upon a flat fee to be paid in three equal payments, commencing August 21, 2023 and ending November 30, 2023. Each installment is to be paid by the 1st of each month beginning September 1, 2023.

C. **Reimbursement for Costs.** The Maximum Contract Price set forth in Section III(B) above includes all costs, direct and indirect, needed to perform the Work and complete the Project, and reimbursement for costs incurred shall be limited as follows:

There shall be no reimbursement for costs.

IV. COVENANTS OF CONSULTANT

A. **Expertise of Consultant; Licenses, Certification and Permits.** Consultant accepts the relationship of trust and confidence established between it and City, recognizing that City's intention and purpose in entering into this Agreement is to engage an entity with the requisite capacity, experience, and professional skill and judgment to provide the Work in pursuit of the timely and competent completion of the Work undertaken by Consultant under this Agreement. Consultant shall employ only persons duly qualified in the appropriate area of expertise to perform the Work described in this Agreement.

Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of Consultant by any and all national, state, regional, county, or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Work contracted for under this Agreement. Further, Consultant agrees that it will perform all Work in accordance with the standard of care and quality ordinarily expected of competent professionals and in compliance with all federal, state, and local laws, regulations, codes, ordinances, or orders applicable to the Project, including, but not limited to, any applicable records retention requirements and Georgia's Open Records Act (O.C.G.A. § 50-18-71, *et seq.*). Any additional work or costs incurred as a result of error and/or omission by Consultant as a result of not meeting the applicable standard of care or quality will be provided by Consultant at no additional cost to City. This provision shall survive termination of this Agreement.

B. **City's Reliance on the Work.** Consultant acknowledges and agrees that City does not undertake to approve or pass upon matters of expertise of Consultant and that, therefore, City bears no responsibility for Consultant's Work performed under this Agreement. Consultant acknowledges and agrees that the acceptance of Work by City is limited to the function of determining whether there has been compliance with what is required to be produced under this Agreement. City will not, and need not, inquire into adequacy, fitness, suitability or correctness of Consultant's performance. Consultant further agrees that no approval of designs, plans, specifications or other work product by any person, body or agency shall relieve Consultant of the responsibility for adequacy, fitness, suitability, and correctness of Consultant's Work under professional and industry standards, or for performing services under this Agreement in

accordance with sound and accepted professional and industry principles.

C. **Consultant's Reliance on Submissions by City.** Consultant must have timely information and input from City in order to perform the Work required under this Agreement. Consultant is entitled to rely upon information provided by City, but Consultant shall provide immediate written notice to City if Consultant knows or reasonably should know that any information provided by City is erroneous, inconsistent, or otherwise problematic.

D. **Consultant's Representative.** Lavana White shall be authorized to act on Consultant's behalf with respect to the Work as Consultant's designated representative, provided that this designation shall not relieve either Party of any written notice requirements set forth elsewhere in this Agreement.

E. **Assignment of Agreement.** Consultant covenants and agrees not to assign or transfer any interest in, or delegate any duties of this Agreement, without the prior express written consent of City. As to any approved subcontractors, Consultant shall be solely responsible for reimbursing them, and City shall have no obligation to them.

F. **Responsibility of Consultant and Indemnification of City.** Consultant covenants and agrees to take and assume all responsibility for the Work rendered in connection with this Agreement. Consultant shall bear all losses and damages directly or indirectly resulting to it and/or City on account of the performance or character of the Work rendered pursuant to this Agreement. Consultant shall defend, indemnify and hold harmless City and City's elected and appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers (individually an "Indemnified Party" and collectively "Indemnified Parties") from and against any and all claims, suits, actions, judgments, injuries, damages, losses, costs, expenses and liability of any kind whatsoever, including but not limited to attorney's fees and costs of defense ("Liabilities"), which may arise from or be the result of an alleged willful, negligent or tortious act or omission arising out of the Work, performance of contracted services, or operations by Consultant, any subcontractor, anyone directly or indirectly employed by Consultant or subcontractor or anyone for whose acts or omissions Consultant or subcontractor may be liable, regardless of whether or not the act or omission is caused in part by a party indemnified hereunder; provided that this indemnity obligation shall only apply to the extent Liabilities are caused by or result from the negligence, recklessness, or intentionally wrongful conduct of the Consultant or other persons employed or utilized by the Consultant in the performance of this Agreement. This indemnity obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision.

In any and all claims against an Indemnified Party, by any employee of Consultant, its subcontractor, anyone directly or indirectly employed by Consultant or subcontractor or anyone for whose acts Consultant or subcontractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. This obligation to indemnify, defend, and hold harmless the Indemnified Party(ies) shall survive

expiration or termination of this Agreement, provided that the claims are based upon or arise out of actions or omissions that occurred during the performance of this Agreement.

G. Independent Contractor. Consultant hereby covenants and declares that it is engaged in an independent business and agrees to perform the Work as an independent contractor and not as the agent or employee of City. Nothing in this Agreement shall be construed to make Consultant or any of its employees, servants, or subcontractors, an employee, servant or agent of City for any purpose. Consultant agrees to be solely responsible for its own matters relating to the time and place the Work is performed and the method used to perform such Work; the instrumentalities, tools, supplies and/or materials necessary to complete the Work; hiring of consultants, agents or employees to complete the Work; and the payment of employees, including benefits and compliance with Social Security, withholding and all other regulations governing such matters. Consultant agrees to be solely responsible for its own acts and those of its subordinates, employees, and subcontractors during the life of this Agreement. There shall be no contractual relationship between any subcontractor or supplier and City by virtue of this Agreement with Consultant. Any provisions of this Agreement that may appear to give City the right to direct Consultant as to the details of the services to be performed by Consultant or to exercise a measure of control over such services will be deemed to mean that Consultant shall follow the directions of City with regard to the results of such services only. It is further understood that this Agreement is not exclusive, and City may hire additional entities to perform the Work related to this Agreement.

Inasmuch as City and Consultant are independent of each other, neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both Parties hereto. Consultant agrees not to represent itself as City's agent for any purpose to any party or to allow any employee of Consultant to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. Consultant shall assume full liability for any contracts or agreements Consultant enters into on behalf of City without the express knowledge and prior written consent of City.

I. Insurance.

- (1) **Requirements:** Consultant shall maintain in effect at its own expense liability insurance as follows: one million dollars (\$1,000,000) of comprehensive general liability insurance (bodily injury and property damage). Consultant shall also maintain at its own expense one million dollars (\$1,000,000) of professional liability insurance. Consultant does not have employees, subcontractor nor any agent acting on its behalf. **See Exhibit B.**
- (2) **Deductibles and Self-Insured Retentions:** Any deductibles or self-insured retentions must be declared to and approved by City in writing so that City may ensure the financial solvency of Consultant; self-insured retentions should be included on the certificate of insurance.
- (3) **Other Insurance Provisions:** Each policy shall contain, or be endorsed to contain, the following provisions respectively:
 - (a) **General Liability, Automobile Liability and (if applicable) Umbrella Liability Coverage.**

- (i) **Additional Insured Requirement.** City and City's elected and appointed officials, officers, boards, commissioners, employees, representatives, consultants, servants, agents and volunteers (individually "Insured Party" and collectively "Insured Parties") shall be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, leased, or used by Consultant; automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Nothing contained in this section shall be construed to require the Consultant to provide liability insurance coverage to any Insured Party for claims asserted against such Insured Party for its sole negligence.
 - (ii) **Primary Insurance Requirement.** Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the Insured Parties. Any insurance or self-insurance maintained by the Insured Parties shall be in excess of Consultant's insurance and shall not contribute with it.
 - (iii) **Reporting Requirement.** Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Insured Parties.
 - (iv) **Separate Coverage.** Coverage shall state that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to limits of insurance provided.
 - (v) **Defense Costs/Cross Liability.** Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
 - (vi) **Subrogation.** The insurer shall agree to waive all rights of subrogation against the Insured Parties for losses arising from Work performed by Consultant for City.
- (4) Acceptability of Insurers: The insurance to be maintained by Consultant must be issued by a company licensed or approved by the Insurance Commissioner to transact business in the State of Georgia. Such insurance policies shall be placed with insurer(s) with an A.M. Best Policyholder's rate of no less than "A-" and with a financial rating of Class VII or greater. The Consultant shall be responsible for any delay resulting from the failure of its insurer to provide proof of coverage in the proscribed form.
- (5) Verification of Coverage: Consultant shall furnish to City for City approval

certificates of insurance and endorsements to the policies evidencing all coverage required by this Agreement prior to the start of work. Without limiting the general scope of this requirement, Consultant is specifically required to provide an endorsement naming City as an additional insured when required. The certificates of insurance and endorsements for each insurance policy are to be on a form utilized by Consultant's insurer in its normal course of business and are to be signed by a person authorized by that insurer to bind coverage on its behalf, unless alternate sufficient evidence of their validity and incorporation into the policy is provided. City reserves the right to require complete, certified copies of all required insurance policies at any time. Consultant shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage.

- (6) Claims-Made Policies: Consultant shall extend any claims-made insurance policy for at least six (6) years after termination or final payment under the Agreement, whichever is later, and have an effective date which is on or prior to the Effective Date.
- (7) City as Additional Insured and Loss Payee: City shall be named as an additional insured and loss payee on all policies required by this Agreement, except City need not be named as an additional insured and loss payee on any Professional Liability policy or Workers' Compensation policy.

H. Records, Reports and Audits.

- (1) Records:
 - (a) Books, records, documents, account ledgers, data bases, and similar materials relating to the Work performed for City under this Agreement ("Records") shall be established and maintained by Consultant in accordance with applicable law and requirements prescribed by City with respect to all matters covered by this Agreement. Except as otherwise authorized or required, such Records shall be maintained for at least three (3) years from the date that final payment is made to Consultant by City under this Agreement. Furthermore, Records that are the subject of audit findings shall be retained for three (3) years or until such audit findings have been resolved, whichever is later.
 - (b) All costs claimed or anticipated to be incurred in the performance of this Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- (2) Reports and Information: Upon request, Consultant shall furnish to City any and all Records in the form requested by City. All Records provided electronically must be in a format compatible with City's computer systems

and software.

- (3) Audits and Inspections: At any time during normal business hours and as often as City may deem necessary, Consultant shall make available to City or City's representative(s) for examination all Records. Consultant will permit City or City's representative(s) to audit, examine, and make excerpts or transcripts from such Records. Consultant shall provide proper facilities for City or City's representative(s) to access and inspect the Records, or, at the request of City, shall make the Records available for inspection at City's office. Further, Consultant shall permit City or City's representative(s) to observe and inspect any or all of Consultant's facilities and activities during normal hours of business for the purpose of evaluating Consultant's compliance with the terms of this Agreement. In such instances, City or City's representative(s) shall not interfere with or disrupt such activities.

I. Ethics Code; Conflict of Interest. Consultant agrees that it shall not engage in any activity or conduct that would result in a violation of the City of Milton Code of Ethics or any other similar law or regulation. Consultant certifies that to the best of its knowledge no circumstances exist which will cause a conflict of interest in performing the Work. Should Consultant become aware of any circumstances that may cause a conflict of interest during the Term of this Agreement, Consultant shall immediately notify City. If City determines that a conflict of interest exists, City may require that Consultant take action to remedy the conflict of interest or terminate the Agreement without liability. City shall have the right to recover any fees paid for services rendered by Consultant when such services were performed while a conflict of interest existed if Consultant had knowledge of the conflict of interest and did not notify City within five (5) business days of becoming aware of the existence of the conflict of interest.

Consultant and City acknowledge that it is prohibited for any person to offer, give, or agree to give any City employee or official, or for any City employee or official to solicit, demand, accept, or agree to accept from another person, a gratuity of more than nominal value or rebate or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor. Consultant and City further acknowledge that it is prohibited for any payment, gratuity, or offer of employment to be made by or on behalf of a sub-consultant under a contract to the prime Consultant or higher tier sub-consultant, or any person associated therewith, as an inducement for the award of a subcontract or order.

J. Confidentiality. Consultant acknowledges that it may receive confidential information of City and that it will protect the confidentiality of any such confidential information and will require any of its subcontractors, consultants, and/or staff to likewise protect such confidential information. Consultant agrees that confidential information it learns or receives or such reports, information, opinions or conclusions that Consultant creates under this Agreement shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of City. Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether specifically deemed confidential or not.

Consultant acknowledges that City's disclosure of documentation is governed by Georgia's Open Records Act, and Consultant further acknowledges that if Consultant submits records containing trade secret information, and if Consultant wishes to keep such records confidential, Consultant must submit and attach to such records an affidavit affirmatively declaring that specific information in the records constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10, and the Parties shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

K. Meetings. Consultant is required to meet with City's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the Term of this Agreement at no additional cost to City. Meetings will occur as problems arise and will be coordinated by City. City shall inform Consultant of the need for a meeting and of the date, time and location of the meeting at least three (3) full business days prior to the date of the meeting. Face-to-face meetings are desired. However, at Consultant's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings, two consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of this Agreement for cause.

L. Ownership of Work. All reports, designs, drawings, plans, specifications, schedules, work product and other materials, including, but not limited to, those in electronic form, prepared or in the process of being prepared for the Work to be performed by Consultant ("Materials") shall be the property of City, and City shall be entitled to full access and copies of all Materials in the form prescribed by City. Any Materials remaining in the hands of Consultant or subcontractor upon completion or termination of the Work shall be delivered immediately to City whether or not the Project or Work is commenced or completed; provided, however, that Consultant may retain a copy of any deliverables for its records. Consultant assumes all risk of loss, damage or destruction of or to Materials. If any Materials are lost, damaged or destroyed before final delivery to City, Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all Materials is hereby assigned to City, and Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

M. Nondiscrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, Consultant agrees that, during performance of this Agreement, Consultant, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed or belief, political affiliation, national origin, gender, age or disability. In addition, Consultant agrees to comply with all applicable implementing regulations and shall include the provisions of this paragraph in every subcontract for services contemplated under this Agreement.

V. COVENANTS OF CITY

A. Right of Entry. City shall provide for right of entry for Consultant and all necessary equipment as required for Consultant to complete the Work; provided that Consultant shall not unreasonably encumber the Project site(s) with materials or equipment.

B. City's Representative. Steven Krokoff, City Manager shall be authorized to act on City's behalf with respect to the Work as City's designated representative on this Project; provided that any changes to the Work or the terms of this Agreement must be approved as provided in Section II above.

VI. TERMINATION

A. For Convenience. City may terminate this Agreement for convenience at any time upon providing written notice thereof at least seven (7) calendar days in advance of the termination date. If the City terminates this Agreement for convenience, it will be responsible for the scope of Work in its entirety and will hold Consultant harmless for

B. For Cause. Consultant and City reserve the right to terminate this Agreement for cause.. In the event of Consultant's breach or default under this Agreement, City may terminate this Agreement for cause. City shall give Consultant at least seven (7) calendar days' written notice of its intent to terminate the Agreement for cause and the reasons therefor. If Consultant fails to cure the breach or default within that seven (7) day period, or otherwise remedy the breach or default to the reasonable satisfaction of City, then City may (a) in writing, terminate the Agreement effective the date Consultant received written termination, and/or (b) pursue any other remedy available, at law or in equity, due to City for such default. Consultant may terminate this Agreement for cause only in the event of City's failure to pay Consultant within thirty (30) calendar days of Consultant providing City with notice of a delinquent payment and an opportunity to cure.

C. Statutory Termination. In compliance with O.C.G.A. § 36-60-13, this Agreement shall be deemed terminated as provided in I(D) of this Agreement. Further, this Agreement shall terminate immediately and absolutely at such time as appropriated or otherwise unobligated funds are no longer available to satisfy the obligation of City.

D. Payment Upon Termination. Upon termination, City shall provide for payment to Consultant for services rendered and, where authorized, expenses incurred prior to the termination date; provided that, where this Agreement is terminated for cause.

E. Requirements Upon Termination. Upon termination, Consultant shall: (1) promptly discontinue all services, cancel as many outstanding obligations as possible, and not incur any new obligations, unless the City directs otherwise; and (2) promptly deliver to City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by Consultant in performing this Agreement, whether completed or in process, in the form specified by City.

F. Reservation of Rights and Remedies. The rights and remedies of City and Consultant provided in this Article are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

VII. MISCELLANEOUS

A. Entire Agreement. This Agreement, including any exhibits hereto, constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written Change Order (as provided in Section II above) or other document signed by representatives of both Parties with appropriate authorization.

B. Successors and Assigns. Subject to the provision of this Agreement regarding

assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

C. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without regard to choice of law principles. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of Georgia will control. Any action or suit related to this Agreement shall be brought in the Superior Court of Fulton County, Georgia, or the U.S. District Court for the Northern District of Georgia – Atlanta Division, and Consultant submits to the jurisdiction and venue of such court.

D. **Captions and Severability.** All headings herein are intended for convenience and ease of reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement, or in any way affect this Agreement. Should any article(s) or section(s) of this Agreement, or any part thereof, later be deemed illegal, invalid or unenforceable by a court of competent jurisdiction, the offending portion of the Agreement should be severed, and the remainder of this Agreement shall remain in full force and effect to the extent possible as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the Parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions that may for any reason be hereafter declared in valid.

E. **Business License.** Prior to commencement of the Work to be provided hereunder, Consultant shall apply to City for a business license, pay the applicable business license fee, and maintain said business license during the Term of this Agreement, unless Consultant provides evidence that no such license is required.


F. **Notices.**

- (1) **Communications Relating to Day-to-Day Activities.** All communications relating to the day-to-day activities of the Work shall be exchanged between City's Representative (named above) for City and Consultant's Representative (named above) for Consultant.
- (2) **Official Notices.** All other notices, requests, demands, writings, or correspondence, as required by this Agreement, shall be in writing and shall be deemed received, and shall be effective, when: (1) personally delivered, or (2) on the third day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent via national overnight commercial carrier to the Party at the address given below, or at a substitute address previously furnished to the other Party by written notice in accordance herewith.

NOTICE TO CITY shall be sent to:

Procurement Manager
City of Milton, Georgia
2006 Heritage Walk
Milton, Georgia 30004

NOTICE TO CONSULTANT shall be sent to:

Lavania White


G. Waiver of Agreement. No failure by City to enforce any right or power granted under this Agreement, or to insist upon strict compliance by Consultant with this Agreement, and no custom or practice of City at variance with the terms and conditions of this Agreement shall constitute a general waiver of any future breach or default or affect City's right to demand exact and strict compliance by Consultant with the terms and conditions of this Agreement. Further, no express waiver shall affect any Term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated.

H. Survival. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, confidentiality obligations and insurance maintenance requirements.

I. No Third-Party Rights. This Agreement shall be exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other right.

J. Sovereign Immunity; Ratification. Nothing contained in this Agreement shall be construed to be a waiver of City's sovereign immunity or any individual's qualified, good faith or official immunities. Ratification of this Agreement by a majority of the Mayor and City Council shall authorize the Mayor to execute this Agreement on behalf of City.

K. No Personal Liability. Nothing herein shall be construed as creating any individual or personal liability on the part of any of City's elected or appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys or volunteers. No such individual shall be personally liable to Consultant or any successor in interest in the event of any default or breach by City or for any amount which may become due to Consultant or successor or on any obligation under the terms of this Agreement. Likewise, Consultant's performance of services under this Agreement shall not subject Consultant's individual employees, officers, or directors to any personal contractual liability, except where Consultant is a sole proprietor. The Parties agree that, except where Consultant is a sole proprietor, their sole and exclusive remedy, claim, demand or suit for contractual liability shall be directed and/or asserted only against Consultant or City, respectively, and not against any elected or appointed official, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers.

L. Counterparts; Agreement Construction and Interpretation. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Consultant represents that it has reviewed and become familiar with this Agreement and has notified City of any discrepancies, conflicts or errors herein. In the event of a conflict in the terms of this Agreement and/or the exhibits attached hereto, the terms most beneficial to City shall govern. The Parties hereto agree that, if an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of the Agreement. In the interest of brevity, the Agreement may omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. Words or terms used as nouns in the Agreement shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires contrary meaning.

M. Force Majeure. Neither City nor Consultant shall be liable for its respective non-negligent or non-willful failure to perform or shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of its respective duties or obligations under this Agreement or for any delay in such performance due to: (i) any cause beyond its respective reasonable control; (ii) any act of God; (iii) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (iv) earthquake, fire, explosion or flood; (v) strike or labor dispute, excluding strikes or labor disputes by employees and/or agents of CONSULTANT; (vi) delay or failure to act by any governmental or military authority; or (vii) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection or invasion. In such event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts, and all other obligations shall remain intact.

N. Material Condition. Each term of this Agreement is material, and Consultant’s breach of any term of this Agreement shall be considered a material breach of the entire Agreement and shall be grounds for termination or exercise of any other remedies available to City at law or in equity.

EXHIBIT “A”

Scope of Work

Assist Milton’s Election Superintendent with preparations for conducting our general election in November 2023 and subsequent run-off election, if needed. This includes providing support for (some functions may no longer be applicable):

- Creating an election critical event calendar and project plan;
- Establishing an elections budget;
- Developing policies and procedures for elections processes;
- Developing security policies and protocols concerning election processes and equipment;
- Developing continuity of operations plans and policies;
- Determining the sufficient number of poll workers needed;
- Crafting job descriptions for, recruiting, and hiring poll workers;
- Training and certifying poll workers;
- Reviewing all directives, advisories, memoranda, correspondence, and materials issued by the Secretary of State and advise any action the city should take;
- Recommending equipment purchases and preparation of bids requisitions for supplies and equipment;
- Polling location layout and setup;
- Preparation of the election ballot, including printing and production oversight;
- Recommendation and implementation of election management software, if needed;
- Logic and accuracy testing of voting equipment, if necessary;
- Publishing all legal notices, as appropriate;
- Assessing and mitigating identified risks;
- Processing, evaluating, and reporting election results.

Most of the work can be handled remotely, but onsite support would be required for poll worker training, determining polling location layout, first day of advanced voting, and Election Day.

EXHIBIT "B"

EXHIBIT "C"

Reserved

EXHIBIT "D"
PRIVATE EMPLOYER EXEMPTION AFFIDAVIT
O.C.G.A § 13-10-91

STATE OF GEORGIA
COUNTY OF FULTON

By executing this Affidavit, the undersigned private employer verifies that it is exempt from compliance with O.C.G.A. § 36-60-6, stating affirmatively that the individual, firm or corporation employees zero (0) employees and therefore, is not required to register with and/or utilize the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established by O.C.G.A. § 13-10-90.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Signature of Exempt Private Employer

Date

Printed Name of Exempt Private Employer

Subscribed and sworn before me on this the _____ day of _____, 20_____

Notary Public

[NOTARY SEAL]

My Commission Expires: _____

A COPY OF A VALID DRIVER'S LICENSE IS REQUIRED TO BE SUBMITTED WITH THIS FORM

THIS PART TO BE FILLED OUT BY THE COUNTY:

DL Info:
State: _____

Exp Date:

Verified by:

CC Procurement Office

Date

EXHIBITS “E” AND “F”

Reserved