

## PROFESSIONAL CONSULTING SERVICES AGREEMENT

THIS PROFESSIONAL CONSULTING SERVICES AGREEMENT, (“**Agreement**”) is made and entered into as of 22 February 2024, the (“**Effective Date**”) by and among **FITCH & ASSOCIATES, LLC** (“**Consultant**”), and **CITY OF WHITEWATER, WI.** (“**Client**”).

1. **Retention of Consultant.** Client wishes to benefit from Consultant’s industry expertise and knowledge in the area of Police Services. Therefore, on the terms and conditions set forth in this Agreement, Client engages Consultant to perform the consulting services described below, and Consultant accepts such retention by Client. Consultant warrants that it has no non-compete or other agreement, arrangement, or conflict of interest that prevents or would prevent Consultant from carrying out and performing the Services (as defined below) under this Agreement.
2. **Services.** Consultant shall provide to Client the services described in **Exhibit A** (the “**Services**”). Such Services shall be performed in accordance with: (i) applicable laws, rules and regulations; (ii) generally accepted industry standards; (iii) applicable rules, regulations, policies and standards of Client as provided by Client to Consultant. , Client agrees and acknowledges that Consultant is not performing Services for Client on an exclusive or full-time basis.
3. **Qualifications.** Consultant shall have and maintain during the term of this Agreement all licenses, permits, certifications, registrations, accreditations and approvals as are required by applicable law for Consultant to provide the Services to Client, and shall promptly notify Client of the loss, suspension, or material restriction of any of the foregoing.
4. **Compensation.** Client shall compensate Consultant for performing the Services outlined in **Exhibit A** in the manner as described in **Exhibit B**. Upon request by Client, Consultant shall submit documentation to Client, describing in detail Consultant’s activities in performing the Services. Compensation for Services shall be made payable to Consultant and sent to the address sent forth in **Exhibit B**. Undisputed invoices are to be paid within forty-five (45) days of receipt by Client.
5. **Term.** This Agreement shall commence on the Effective Date and shall continue until completion of the Services as outlined in Exhibit A, unless terminated earlier or extended as provided in this Agreement.
6. **Termination of Agreement** This Agreement may be terminated prior to completion of the Services, as follows:
  - (a) Client shall have the right to immediately terminate this Agreement if Consultant:
    - (i) attempts to assign or otherwise transfer this Agreement without Client prior written consent; or (ii) materially breach(es) of Section 10 of this Agreement, to the extent Section 10 is applicable to this Agreement;
  - (b) If Consultant breaches any term of this Agreement, and fails to cure such breach within ten (10) business days following receipt of Client written notice of the breach, Client may terminate this Agreement, provided that Client shall be responsible for payment of any undisputed and completed Services incurred by Consultant prior to the termination date;
  - (c) If Client breaches any term of this Agreement, and fails to cure such breach

within ten (10) business days following receipt of Consultant's written notice of the breach, Consultant may terminate this Agreement and Consultant shall be entitled to recover payment of any undisputed and completed Services incurred by Consultant prior to the termination date; and

- (d) Client shall be entitled to terminate this Agreement at any time without cause upon thirty (30) calendar days' advance written notice to Consultant. In the event Client determines not to proceed with this Agreement during its term, the Consultant may retain all installment sums previously paid by Client and also bill Client for any non-cancellable expenses incurred and for work actually performed prior to the notice of termination but not yet paid by Client at an hourly rate of \$350 USD.

Upon the termination of this Agreement, the parties shall have no further rights or obligations under this Agreement, except as otherwise provided for in this Agreement, including, without limitation, under Sections 8-12, and except to the extent accruing prior to the effective date of such termination.

7. **Insurance.** Throughout the term of this Agreement, Consultant agrees to carry and maintain, at its expense and in connection with this Agreement, such insurance coverage as is customary in Consultant's line of business. At a minimum, such insurance coverage shall include each of the following coverages:

- (a) Professional liability insurance, providing coverage of at least \$1,000,000 per occurrence and at least \$3,000,000 in the aggregate. Both the occurrence and annual aggregate limits shall be separately applicable to Consultant and each of the licensed professionals providing Services on its behalf under this Agreement.
- (b) Commercial general liability insurance, providing blanket contractual coverage with combined single limit, bodily injury, and property damage liability of at least \$1,000,000 per occurrence and at least \$3,000,000 in the annual aggregate.
- (c) Workers' Compensation, providing statutory limits and any other elements of protection required by applicable law, with a waiver of subrogation against Client and its affiliates.
- (d) Employer's Liability, providing coverage of at least \$1,000,000 per occurrence.
- (e) Such other coverages and limits as may be mutually agreed upon by Consultant and Client from time to time based on the nature of Services provided under this Agreement.

Except for Workers' Compensation and Employer's Liability insurance, each of the required coverages shall be provided by means of a policy or policies of insurance and name Client as an additional insured under each policy. Consultant shall not cancel, limit, or reduce any such coverages in any way without 30 calendar days' prior written notice to Client. Upon request, current certificates of insurance evidencing the required coverages shall be given to Client. The provisions in this Section shall survive termination of this Agreement in accordance with the terms of such insurance coverage.

8. **Indemnification.** Each party ("**Indemnifying Party**") assumes responsibility and liability for the actions of itself, its employees, and its agents. Each party agrees to cooperate with the other, to the extent applicable under the circumstances, in the investigation and/or settlement of any loss or damage or alleged loss or damage arising out of this Agreement. The provisions in this Section shall survive termination of this Agreement.
9. **Nondisclosure of Confidential Information.** Client and Consultant acknowledge that, in the course of the performance of this Agreement, they will have access to information or communications, including proprietary information claimed to be unique, secret, or confidential, and which constitutes the exclusive property or trade secrets of the other party, and not made generally public (the "**Confidential Information**"). Client and Consultant agree to maintain the confidentiality of the Confidential Information and to use the Confidential Information only to the extent necessary for legitimate business uses in connection with this Agreement. Client and Consultant will use commercially reasonable efforts and take all reasonable precautions to protect the Confidential Information. Client and Consultant agree to hold in strict confidence all Confidential Information related to this Agreement in order to ensure such Confidential Information is not disclosed to any third persons other than Qualified Third Parties (as defined below), unless required to do so by law, without the prior written consent of the other party. For purposes of this Section, "**Qualified Third Parties**" shall include those advisors, attorneys, accountants, consultants and/or other representatives as necessary to enforce its rights and perform its agreements and obligations under this Agreement. While Qualified Third Parties may receive information without the prior written consent of Client or Consultant, all such Qualified Third Parties shall be informed that the shared information is confidential and should be treated as such by them consistent with the terms of this Agreement. Upon the disclosing party's request or the termination or expiration of this Agreement, the receiving party shall either return or destroy the Confidential Information then in its possession. Notwithstanding the foregoing to the contrary, the receiving party shall have the right to retain one copy of Confidential Information for regulatory compliance or legal purposes, and shall not be obligated to purge extra copies of Confidential Information from electronic media used solely for data backup purposes; provided, however, such retention shall subject to the terms and conditions of this Agreement and the receiving party shall continue to be bound by its obligations of confidentiality and other obligations hereunder for as long as that Confidential Information is retained. The term "**Confidential Information**" shall not include any information that (i) becomes generally available to the public other than as a result of a disclosure by the receiving party, its affiliate representatives, directors, officers, employees or agents, (ii) was in the possession of the receiving party on a non-confidential basis prior to its disclosure to the receiving party by the disclosing party or (iii) becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party that is entitled to make the disclosure to the receiving party without violation of any obligation of confidentiality to the disclosing party or any other party. The provisions of this Section shall be binding on the parties and shall survive the termination of this Agreement.
10. **Ownership of Deliverables.** All documents, materials, and information which are prepared by the Consultant specifically and exclusively for Client in the performance of the Services under this Agreement ("Deliverable") upon full and final payment to Consultant hereunder, shall become the property of Client and, unless previously delivered to Client, shall be delivered to Client upon termination of this Agreement if Client so requests. Unless Consultant provides its prior written consent, Client shall not use or disclose to any third party, except its attorneys, accountants, or financial advisors with a need to know, any Services, Deliverables or Consultant Information other than (a) as mutually contemplated when Consultant first was retained to provide the Services, and Consultant shall have no liability with respect to,

modifications made by Client or its representatives to the Deliverables.

11. **Patient Information.** The parties do not anticipate that Consultant will need or be given access to any protected health information, as that term is defined by the Health Insurance and Portability and Accountability Act of 1996 (“HIPAA”), under this Agreement. Provided, however, to the extent that Consultant needs or is given access to any protected health information of Client to provide Services, Consultant agrees that it will enter into Client standard business associate agreement or addendum prior to such access and prior to any resulting use or disclosure.
12. **Remedies.** Consultant acknowledges that Client remedy at law for any breach by Consultant of his obligations under Sections 9 or 10 of this Agreement would likely be inadequate, and further acknowledges that, notwithstanding any other provision of this Agreement, temporary and permanent injunctive relief may be sought from any appropriate tribunals or courts and granted in any court or other tribunal proceeding to enforce Sections 9 and/or 10, as applicable, without the necessity of proof of actual damage. However, this Section shall in no way affect Client rights and remedies afforded by law, and Client shall retain the right to recover such damages as Client may have sustained by reason of any breach of this Agreement. The provisions in this Section shall survive termination of this Agreement.

Client acknowledges that Consultant’s remedy at law for any breach by Client of its obligations under Sections 9 of this Agreement would likely be inadequate, and further acknowledges that, notwithstanding any other provision of this Agreement, temporary and permanent injunctive relief may be sought from any appropriate tribunals or courts and granted in any court or other tribunal proceeding to enforce Sections 9 as applicable, without the necessity of proof of actual damage. However, this Section shall in no way affect Consultant’s rights and remedies afforded by law, and Consultant shall retain the right to recover such damages as Consultant may have sustained by reason of any breach of this Agreement. The provisions in this Section shall survive termination of this Agreement.

13. **Work Product Generated by Consultant During Provision of Services.** Consultant shall prepare all deliverables set forth in **Exhibit A**, as its deliverables in providing the Services pursuant to this Agreement (the “Deliverables”). Consultant represents and warrants that all work produced in the Deliverables will be original and will not infringe on any intellectual property rights of any third party. The parties acknowledge that the Deliverables are the exclusive property of Client, except to the extent that such records include information which is publicly available (unless publicly available through a breach of this Agreement by Consultant), and subject to the rights of Consultant as described below.
14. **Pre-Existing Works.** Each party acknowledges that the other party (the “Owner”) owns all of its pre-existing works, as well as all notes, work papers and other internal documents which are developed by the Owner independently of this Agreement and the Services and without use of the other party’s Confidential Information and which are not otherwise public records (collectively, the “IP”). Each party further acknowledges that the Owner may own the copyright in such IP. A non-owning party may not use, nor allow any of its agents or employees to use, such IP in any manner, other than in connection with this Agreement, unless such use is expressly consented to in writing, in advance, by the Owner, except as set forth in this section. Notwithstanding the foregoing, Consultant hereby grants to Client, and Client hereby accepts, a non-exclusive worldwide, perpetual, irrevocable, royalty-free, fully paid-up license to freely use any of Consultant’s IP contained in the Deliverables or reasonably necessary for the use of the Deliverables as intended, for Client internal business purposes. Such license shall be transferable in connection with a sale, merger, transfer or

acquisition of all or part of Client business to which this Agreement relates. In no event will Client sell, publish for compensation, or distribute for compensation any Deliverable developed by Consultant.

Notwithstanding the foregoing, the parties acknowledge and agree that the Owner shall have and retain its rights and interest in all of its Knowledge Capital. The term "**Knowledge Capital**" shall mean the Owner's ideas, know-how, approaches, methodologies, concepts, system, skills, tools, techniques, expressions and processes, including any intellectual property rights associated therewith. This Agreement does not preclude the Owner from developing, marketing or using, for itself or others, any services, products or other items that are the same as or similar to those provided by the Owner under this Agreement.

15. **Independent Contractor Status.** Consultant is performing the Services and duties required of Consultant pursuant to this Agreement as an independent contractor and not as an employee, partner or joint venture with Client. Consultant shall not have authority to bind or obligate Client in any manner. Client shall neither have nor exercise any control over the methods by which Consultant accomplishes the performance of the Services. The sole interest of Client is to assure that the Services are provided in a competent, efficient, and satisfactory manner. Consultant shall be solely responsible for the payment or withholding of all income taxes, Social Security taxes, unemployment taxes, and any other similar taxes imposed by any jurisdiction, workers' compensation and other insurance required by law arising from Consultant's compensation under this Agreement.
16. **Dispute Resolution.** Consultant and Client shall in good faith attempt to resolve any controversy, dispute or disagreement arising out of or relating to this Agreement by web-based application negotiations by the Executive Directors of Consultant and Client, or their respective designees.
17. **Non-Exclusion/Conviction.** Consultant represents and warrants to Client that neither it, any of its affiliates nor any person providing Services under this Agreement: (a) is excluded from participation in any federal health care program, as defined under 42 U.S.C. §1320a-7b (f), for the provision of items or services for which payment may be made under such federal health care programs; or (b) has been recently convicted (as that term is defined under 42 U.S.C. §1320a-7(i)) of a criminal offense related to health care. Consultant further represents and warrants that it has not arranged or contracted (by employment or otherwise) with any employee, contractor or agent that such party or its affiliates know or should know are excluded from participation in any federal health care program, to provide Services. Consultant represents and warrants to Client that no final adverse action, as such term is defined under 42 U.S.C. §1320a-7e (g), has occurred or is pending or threatened against such Consultant or its affiliates or to their knowledge against any employee, contractor or agent engaged to provide Services.
18. **Assignment; Benefit.** Consultant shall not assign nor subcontract (except as provided herein) any portion of its obligations under this Agreement without the prior written consent of Client and any such assignment shall be null and void. Client shall be permitted to assign this Agreement to any of its affiliates. Otherwise, this Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns, executors, representatives and heirs.
19. **Enforceability of Remainder of Agreement.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, then that term, provision, covenant or condition shall be reformed or rescinded as ordered by the court. However, the remainder of this Agreement shall remain in full force and effect.

20. **Notice.** All notices, demands or other writings shall be deemed sufficiently given if personally delivered or deposited in the United States mail in a properly stamped envelope, certified or registered mail, return receipt requested, or delivered to an overnight mail service, call-back requested, addressed to the party to whom it is given at the addresses set forth below or such other persons or addressees or numbers as shall be given by notice of any party:

If to Client:

City of Whitewater  
312 W. Whitewater St.  
Whitewater, WI 53190  
Attn: Chief Daniel Meyer

If to Consultant:

Fitch & Associates, LLC  
2901 Williamsburg Terrace #G  
Box 170  
Platte City, MO 64079  
Attn: President

-and-

Bryan Cave Leighton Paisner LLP  
1200 Main Street, #3800  
Kansas City, MO 64105  
Attn: Vicki Westerhaus

**Miscellaneous.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. This Agreement, including its exhibits, all of which are incorporated herein by reference, constitutes the entire understanding between the parties concerning this subject matter and supersedes any and all previous agreements between the parties on this subject matter. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one agreement.

This Agreement may be amended or modified by a written instrument executed by Client and Consultant.

The failure by Client or Consultant to exercise any right shall not be deemed a waiver of any right. The captions of the various sections of the Agreement are not a part of its context and are inserted merely for convenience in locating the different provisions and shall be ignored in construing this Agreement.

*(signature page to follow)*

IN WITNESS WHEREOF, the parties, through their respective authorized representatives, have executed this Agreement as of the Effective Date.

FITCH & ASSOCIATES, LLC

CITY OF WHITEWATER, WI

By: Roxanne Peek  
Roxanne Peek, President

By: [Signature]  
Name: Daniel Meyer  
Title: Chief of Police

## **EXHIBIT A**

### **Services**

Services to be provided are outlined in attached proposal, referred to as Police Organizational and Workload Study, dated 26 January 2024.



## **EXHIBIT B**

### **Compensation**

Client shall compensate Consultant for the provision of Services as follows:

- **Professional Service Fee:** The Consultant fee shall be a total project rate of \$48,000 USD be invoiced in three (3) payments, as outlined in the schedule below:
  1. 30% due upon signing of agreement - \$14,400 USD
  2. 30% due upon completion of Analysis of CAD Data, Geographic Analysis - \$14,400 USD
  3. 40% due upon project completion - \$16,000 USD

If, during the term of this Agreement, the scope of the Services to be provided by Consultant is modified or Consultant identifies any unforeseen circumstances that will extend the length of the Services, Consultant shall proactively discuss such issues with Client. In such circumstance, the parties agree to discuss in good faith any necessary modifications to the compensation and Services provided by the Consultant.

Consultant shall submit its invoices to:

ATTN: City of Whitewater Police Department  
Accounts Payable  
312 W. Whitewater St.  
Whitewater, WI 53190  
Attn: Chief Daniel Meyer  
Email: DMeyer@whitewater-wi.gov

Undisputed invoices are to be paid within 45 days of receipt by Client.