

RECORD OF RESOLUTIONS

Daphn Legal Blare, Inc. Form No. 30015

Resolution No. _____

Passed _____, 20____

CITY OF BELPRE
RESOLUTION NO. 29 (2018-19)

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER
INTO A CONSULTANT AGREEMENT WITH
BURTON PLANNING SERVICES, LLC**

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BELPRE, OHIO, THAT:

SECTION I

The Mayor of the City of Belpre, Ohio, is hereby authorized to enter into a Consultant Agreement with Burton Planning Services, LLC, a copy of which is hereby attached as Exhibit A.

SECTION II

This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, welfare and safety of the City, and for the further reason that this Agreement needs to be executed as soon as possible. Wherefore, this Resolution shall take effect and be in full force from and immediately after its passage by Council and signing by the Mayor.

PASSED: October 14, 2019

James B. M...
PRESIDENT OF COUNCIL

ATTEST: Kimberly M...
CLERK

PRESENTED TO MAYOR: 10/14/19

Michael D. ...
MAYOR

APPROVED BY MAYOR: 10/14/19

CLERK'S CERTIFICATION OF PUBLICATION

The undersigned Clerk of the Council of the City of Belpre, Ohio, does hereby certify that on October 15, 2019, this Resolution was published by posting a copy of the same at the five public places designated by the City Council in Ordinance No. 18 (2006-07).

Date

October 15, 2019

Kimberly M...
CLERK

CONSULTANT AGREEMENT

THIS CONSULTANT AGREEMENT ("Agreement") is made and entered into as of SEPTEMBER 23, 2019, by and between CITY OF BELPRE ("Client"), and Burton Planning Services, LLC, a limited liability company ("Consultant") (each a "Party" and collectively the "Parties").

RECITALS

WHEREAS, Client may desire Consultant to provide, and Consultant wishes to provide, certain professional services regarding the ECONOMIC DEVELOPMENT STRATEGIC PLAN ("Project") for Client, and in return Client agrees to pay Consultant compensation as set forth herein; and

WHEREAS, the Parties desire to establish the terms and conditions that will apply to Project services issued by Client to Consultant;

NOW, THEREFORE, in consideration of the mutual promises and obligations of the parties hereunder, the Parties agree as follows:

ARTICLES

1. SERVICES.

- A. Project. Consultant shall provide services as requested by Client set forth on the Scope of Work which is attached hereto as Schedule A and incorporated herein by this reference.
- B. Scope of Work. Project services Scope of Work will: (1) describe the obligations of Consultant pursuant to the Project services including the tasks to be performed and any materials and deliverables to be produced by Consultant (collectively, "Deliverables"), the specifications for any Deliverables and acceptance criteria of Client; (2) designate a commencement date and term of the Project and contain a schedule for the completion of tasks and Deliverables; (3) describe the obligations of Client pursuant to that Project, including any obligations relating to the provision of facilities, equipment, or other support; (4) specify Consultant's charges; and (5) contain such other information as the Parties may wish to include.
- C. Change Orders. Changes to the Project will be subject to the mutual agreement of Client and Consultant. Within five (5) days of receiving written notice from a party of a proposed change, Consultant shall provide Client with a written statement of any resulting changes to the Project services including but not limited to any changes in the time to complete the Project, the estimated cost required to complete the change and any proposed price increase or decrease (including justification). Subsequently, upon mutual execution of a written change order Consultant shall proceed in accordance with the change. Technical clarification may be given to Consultant from time to time within the general scope of the Project. Consultant shall not proceed to implement any technical clarification or change that may affect cost, completion schedule, or any other provision of the Project unless and until such clarification or change is authorized in writing and signed by Client.

2. TERM AND TERMINATION.

- A. Term. This Agreement is effective on the date first written above and shall continue in full force and effect thereafter unless and until terminated by either party in accordance with the

provisions of this Agreement.

- B. Termination by Consultant and/or Client. Client may terminate this Agreement or any Statement of Work, at any time, with or without cause, upon five (5) days prior written notice to Consultant. This Agreement may also be terminated by mutual written agreement setting forth the reasons for such termination and the effective date. Upon such termination, Consultant shall provide Client with all work product that has been undertaken up to the date of termination.
- C. Provisions Surviving Termination. In addition to any obligations to make payments of amounts that are due under this Agreement and any other provisions which, by their express terms, survive termination, the provisions of Sections 2, 3, 6, 7, 8, 9, 10, 11, 12, and 14 shall survive termination.

3. COMPENSATION.

- A. Fees. Client shall pay Consultant for the services provided pursuant to this Agreement, as provided in the Scope of Work. There is no overtime, weekend or holiday rate unless specifically set forth in the Scope of Work. Unless otherwise specified in the Scope of Work, Client shall not be charged sales tax for services rendered by Consultant.
- B. Consultant Expenses. Consultant shall be responsible for all expenses that it may incur in connection with this Agreement; unless otherwise set forth in the Scope of Work or otherwise agreed to, in writing, by Client.
- C. Invoices and Payment Terms. Consultant will provide Client with monthly invoices with respect to the fees and costs incurred during the preceding month. Each invoice shall set forth the completed work, detail any out-of-pocket expenses authorized hereunder (and have attached copies of supporting documentation), and contain such other information or documentation as Client may request in writing with respect to its invoices from Consultant. Client shall endeavor to pay the invoice within fourteen (14) days of receipt of the corresponding invoice from the Consultant.
- D. Dispute of Payment. Client may contest, in good faith, any portion of an invoice and withhold payment of such contested amount, provided that Client pays the portion of any invoice that it does not contest and Client attempts to try to resolve the dispute. Consultant reserves the right to suspend services during such dispute. Once the matter is resolved, Client shall pay any agreed-upon amount within five (5) days thereafter.
- E. Compensation Upon Termination. Upon termination of this Agreement, Client shall only be obligated to pay: (1) for authorized services performed and non-cancelable authorized expenses incurred prior to the date of notice of termination; and (2) for authorized services performed and authorized expenses incurred prior to the effective date of termination with the prior written consent of the Project Manager. Client shall not be responsible to Consultant for any fees other than for services rendered and authorized expenses incurred prior to the effective date of termination. In the event that Client has advanced monies to Consultant for services not performed or authorized expenses not incurred prior to the date of written notice of termination, Consultant shall refund to Client any such monies.
- F. Consultant Records. Consultant shall maintain accounting records in accordance with generally accepted accounting principles necessary to disclose the basis for any charges or authorized expenses billed to Client under this Agreement. Consultant shall retain such

records for a period of three (3) years after the termination or expiration of this Agreement. Client and/or Consultant will have the right, upon not less than five (5) days prior notice to Consultant, to examine all original cost records, including employees' time sheets, payrolls, receiving reports, invoices, and all other evidence of expenditure involving this Agreement. Consultant understands that the Client is subject to the Ohio Public Records Act. Documents used in the performance the Agreement may be subject to the Ohio Public Records Act and made available to third parties. At the conclusion of the Agreement, all such documents in Consultant's possession shall be turned over to Client.

4. PROJECT MANAGER.

- A. Client's Project Manager shall be the person identified in the applicable Scope of Work or such other person as Client shall designate in writing. Consultant shall report to and work under the direction of the Project Manager. Client will have final decision-making authority on all Project matters. Decisions in areas that are related to or significantly impact Consultant will be made after consultation with the appropriate Consultant management personnel. If set forth in the Scope of Work, Consultant will participate in Project meetings and discussions as required by the Project Manager or when the meeting or discussion addresses areas involving Consultant work hereunder.

5. CONSULTANT PERSONNEL.

- A. In the event that any Consultant employee performing services under this Agreement is found to be unacceptable to Client or Consultant for any reason, Client shall have the right to notify Consultant of such fact (without waiving any other rights or remedies it may have hereunder) and Consultant shall remove the employee from performing services under this Agreement. Consultant shall provide a qualified replacement, at the same or a lower rate of compensation and there will be no charge to Client for any replacement provided in accordance with this provision for a reasonable period of time while the replacement employee acquires the necessary orientation and education to make a productive contribution substantially equal to that which was expected of the employee replaced.

6. INDEPENDENT CONTRACTOR.

- A. Independent Consultant Status. It is understood that Consultant's services hereunder are to be rendered in the capacity of an independent contractor of Client, and that no Consultant personnel is in any respect or under any circumstances an employee of Client. Neither Party has authority to enter into contracts or assume any obligations for or on behalf of the other Party or to make any warranties or representations for or on behalf of the other Party. Consultant shall not be a "public employee" and shall not be entitled to any benefits made available to employees of Client, including but not limited to participation in Ohio Public Employees Retirement System. Client shall not be required to utilize Consultant and may, in its sole discretion, have other consultants or employees perform the same or similar services as Consultant.
- B. Taxes and Benefits. Consultant shall be solely responsible for any taxes imposed on the performance of services or the payment for such services. Consultant shall bear sole responsibility for payment of compensation to its personnel. Consultant shall pay and report, for all personnel assigned to Consultant's work, federal and state income tax withholding, social security taxes and unemployment insurance applicable to such personnel as employees of Consultant. Consultant shall bear sole responsibility for any workers' compensation, health or disability insurance, retirement and other benefits to which such

personnel may be entitled to other taxes, costs or expenses incurred in the performance of any engagement hereunder. Consultant agrees that it shall remit to the appropriate federal, state or local governmental entities any and all taxes associated with the services provided by Consultant hereunder and indemnifies and holds Client harmless for any withholding tax or other tax liability asserted against Client as a result of Consultant's failure to pay such taxes.

7. PUBLIC REPRESENTATIONS.

- A. Consultant shall not make, and shall not permit any of its personnel to make, any statement, announcement, press release, marketing material, or other communication that discloses the existence of this Agreement, services provided hereunder, or the relationships between Consultant and Client to any member of the public, press, another business entity, or any official body without the prior written consent of Client, as determined in Client's sole discretion.

8. INDEMNIFICATION. Intentionally omitted.

9. INSURANCE.

- A. Prior to commencing the Project, Consultant shall at its own cost and expense obtain and maintain in effect for the duration of this Agreement the following minimum insurance coverages from insurers licensed, authorized or approved to do business in the state where the Project is to be performed.
- B. In the absence of higher or more stringent insurance coverages in the Agreement, the minimum required insurance coverages are:

<u>Required Coverage</u>	<u>Required Policy Limits</u>	
Professional Liability	Each Claim	\$1,000,000
	Aggregate	\$1,000,000
Workers Compensation	Statutory requirements in the State work is performed	
Employer's Liability	Bodily Injury by Accident	\$1,000,000 each occurrence
	Bodily Injury by Disease	\$1,000,000 policy limit
	Bodily Injury by Disease	\$1,000,000 each employee
Commercial General Liability	Each Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
Automobile Liability	Combined Single Limit	\$1,000,000
Umbrella/Excess Liability	Each Occurrence	\$1,000,000
	Aggregate	\$1,000,000

- C. Consultant agrees to the following regarding the above-required insurance coverages:
 - i. General liability coverage shall be maintained for at least three (3) years after substantial completion of the Project, or for such longer period as may be provided by the Agreement.

- ii. All insurance coverage, with the exception of workers compensation and professional liability, to be maintained and furnished hereunder by Consultant shall be primary and non-contributory with respect to the Project as to Client and as to any insurance maintained by Client.
- iii. Consultant shall cause Client to be named as an additional insured as to all insurance coverage required hereunder, except workers compensation, employer's liability, and professional liability. Additional insured coverage under the general liability policy shall include coverage for claims arising out of both ongoing and completed operations.
- iv. Client shall be notified in writing at the address provided in this Agreement at least thirty (30) days prior to the effective date of any cancellation or nonrenewal of required insurance (ten (10) days if cancelled due to nonpayment of premium).
- v. To the extent permissible by law, all required coverages shall include a waiver of any rights of subrogation by the insurer against Client.
- vi. Upon request, before commencing the Project, and annually thereafter, Consultant shall provide to Client certificates of insurance, including copies of applicable policy endorsements, indicating that Consultant understands and agrees that maintaining the required insurance coverages and providing Client the requisite certificates of insurance are conditions precedent to Consultant's entitlement to receive payment for Consultant's services.

10. REPRESENTATIONS, WARRANTIES, COVENANTS, AND OBLIGATIONS OF CONSULTANT.

- A. Consultant shall comply with all federal, state and local laws, statutes, ordinances, rules, regulations, codes, orders and programs, including but not limited to identification and procurement of required certificates, approvals, inspections, permits and obligations which are or subsequently become necessary or convenient for Consultant to perform its duties.
- B. Consultant represents that it will perform the Services in a professional and competent manner, in accordance with industry and professional standards.
- C. Consultant warrants that the tangible Deliverables shall be in merchantable condition and free of all defects. In addition, Client shall receive free, good and clear title to all Deliverables developed under this Agreement and such Deliverables shall not violate the proprietary rights of any third party.
- D. Consultant represents that Consultant has the full power and authority, right and license to enter into and perform this Agreement and further represents that the act of entering into this Agreement and performing the duties and services hereunder will not result in the breach of or constitute a default under any agreement or other restriction to which Consultant is a party.

11. CONFIDENTIAL INFORMATION, Intentionally omitted.

12. INTELLECTUAL PROPERTY.

- A. Consultant will disclose and does hereby assign to Client, its successors and assigns, any and all inventions, creations, mask works, improvements, or other developments, each

whether patentable, copyrightable or not, which Consultant may hereafter make or assist in making with respect to or related to the Deliverables ("Work Product").

- B. Consultant acknowledges and agrees that any Work Product constitutes works made for hire under the applicable laws and that Client will be considered the author and owner of such works. If any of the Work Product may not, by operation of law or otherwise, be considered work made for hire or if ownership of all right, title and interest of the intellectual property rights therein shall not otherwise vest exclusively with Client, Consultant hereby assigns to Client, and upon future creation thereof automatically assigns to Client, without further consideration, the ownership of the Work Product. To the extent such an assignment may not be legally permissible or enforceable in a given jurisdiction or country, and/or to the extent any preexisting intellectual property, (being intellectual property developed or known by Consultant prior to the date of this Agreement), is contained in any Work Product that Consultant delivers to Client, Consultant grants to Client an exclusive, worldwide, perpetual, irrevocable, royalty free, assignable, license which shall include but not be limited to the right of Client to use, reproduce, display, and distribute the Work Product in any and all media and in any format. With respect to any claim of infringement by a third party, if the Work Product or any part thereof, is held to constitute an infringement or its use is enjoined, Consultant will, at its own expense and at its option (i) procure for Client the right to continue use, or (ii) modify the Work Product so that it becomes non-infringing. Consultant will indemnify and hold harmless Client, its elected officials, officers, directors, employees, customers and agents from and against any and all claims, losses, liabilities, damages, expenses and costs (including reasonable attorneys' fees and court costs) (collectively "Claims") which result from the breach of this section.

13. ASSIGNMENT AND SUBCONTRACTING.

- A. Consultant may not assign its rights, delegate its duties or subcontract its obligations without Client's prior written consent, as determined in Client's sole discretion. Any assignment, delegation or subcontract in violation of this Section shall be void and of no effect. Client may, without the consent of Consultant, assign, transfer, delegate, or grant all or any part of its rights or obligations under this Agreement. The Parties' rights and obligations will bind and inure to the benefit of their respective successors and permitted assigns.

14. DISPUTE RESOLUTION.

- A. All claims, disputes and other matters in controversy between Consultant and Client arising out of this Agreement (except for non-payment claims by Consultant) shall be submitted to mediation before and as a condition precedent to other remedies provided by law.

15. MISCELLANEOUS.

- A. Notice. Any notice required or permitted to be given hereunder will be deemed to have been served properly, if sent by: (1) recognized overnight courier (e.g., Federal Express) or (2) certified or registered mail, postage prepaid, properly addressed and posted in a United States depository to the respective Parties hereto at the following addresses:

To Client:
CITY OF BEPLRE
P.O. BOX 160
715 PARK DRIVE
BELPRE, OHIO 45714
ATTN: MAYOR MICHAEL LORENTZ

To Consultant:
BURTON PLANNING SERVICES, LLC
252 ELECTRIC AVENUE
WESTERVILLE, OHIO 43081
ATTN: KIMBERLY BURTON

Notice will be deemed to be given upon receipt.

- B. Severability. It is the intention of the Parties that the provisions of this Agreement will be enforceable to the fullest extent permissible under applicable laws, and that the unenforceability of any provisions under such laws will not render unenforceable, or impair, the remainder of the Agreement. If any provisions hereof are deemed invalid or unenforceable, either in whole or in part, this Agreement will be deemed amended to delete or to modify, as necessary, the offending provisions and to alter the bounds thereof in order to render it valid and enforceable.
- C. Waiver. No waiver of any breach or failure by either Party to enforce any of the terms or conditions of this Agreement at any time will, in any manner, limit or waive such Party's right thereafter to enforce and to compel strict compliance with every term and condition hereof.
- D. Headings. Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement.
- E. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.
- F. Governing Law; Venue. This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of Ohio (without giving effect to principles of conflicts of laws).
- G. Construction. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation."
- H. Entire Agreement. This Agreement constitutes the entire Agreement between Client and Consultant as to its scope and supersedes any prior oral or written agreements, representations or communications with respect to the subject matter hereof. No modification of this Agreement will have any force or effect unless such modification is in writing and signed by the Project Manager and a representative of Consultant.

16. SIGNATURES

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

CLIENT

CONSULTANT

By:

By:

Signature

Signature

Print Name

Kimberly Burton

Print Name

Print Title

President

Print Title

The person signing on behalf of their respective party represents that s/he is legally authorized to sign on behalf of said party.

