



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 11/17/2022

File ID: TMP-2266

Department: Finance

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into an agreement between the City of Huntsville and BMSS for specified accounting services.

Type of Document: Resolution No.

Does this item need to be published? No

If yes, please list preferred date(s) of publication: _____

Finance Information:

Account Number: 1000-13-13100-515370-00000000-

City Cost Amount: \$ 20,000.00 (NTE)

Total Cost: \$ 20,000.00 (NTE)

Special Circumstances:

Grant Funded: \$ N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location:

Address: N/A

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

RESOLUTION NO. 22-____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor is hereby authorized to enter into an Agreement, by and between the City of Huntsville, a municipal corporation in the State of Alabama, and BMSS, LLC, which said Agreement is attached hereto and identified as "BMSS Advisors & CPAs," for professional services identify, Master Services Engagement Letter memorializes the understanding between BMSS and Client for the relationship between BMSS and Client, consisting nine (9) pages and the date of November 15, 2022 appearing on the margin of the first page, together with the signature of the President or President Pro Tern of the City Council, and executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 17th day of November, 2022.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 17th day of November, 2022.

Mayor of the City of Huntsville,
Alabama

November 15, 2022

City of Huntsville
308 Fountain Circle SW
Huntsville, Alabama 35801

RE: Master Services Engagement Letter

Dear Ms. Smith,

Thank you for retaining BMSS, LLC (“BMSS”, the Firm, “we” and “us”) to assist the City of Huntsville (collectively “Client” and sometimes “you”). This Master Services Engagement Letter memorializes the understanding between BMSS and Client for the relationship between BMSS and Client as of the date first written above. If a Statement of Work is in progress at the conclusion of the term written above, the provisions of this Master Services Engagement Letter shall be extended until the services described in the in-progress Statement of Work are completed.

BMSS offers a wide range of services from which Client may choose. Each service to be provided will be accompanied by a separate Statement of Work describing the service, obligations of BMSS and obligations of Client. Suggestions, proposals and other communications become obligations of the parties only upon completion of a written understanding between BMSS and Client.

The terms and conditions set forth below memorialize the understanding pursuant to which BMSS will provide services to you (“Client”). In the event of a conflict between this Master Services Engagement Letter and a Statement of Work, document, the terms of the Statement of Work shall control.

- 1. Statement of Work** – During the term of this Master Services Engagement Letter, as set forth above, Client may request and BMSS may accept assignments to perform services for Client. It is the intention of the parties that a description of the services to be performed along with the obligations and responsibilities of Client and BMSS shall be included in each Statement of Work. BMSS services will be limited to the services specifically described in each Statement of Work. BMSS acceptance of services under a particular Statement of Work does not obligate BMSS to perform any other services. The terms of this Master Services Engagement Letter shall govern the relationship between Client and BMSS. Each Statement of Work shall be approved by Client personnel and BMSS personnel and upon such approval will be binding upon both Client and BMSS. In the event that there are multiple Statements of Work, the termination provisions contained herein may apply to each Statement of Work individually. As each the services performed under each Statement of Work are performed and deliverables, if any are transmitted, the Statement of Work shall be deemed complete and the obligations of BMSS shall be deemed accepted by Client if no communication disputing completion from Client is received within thirty days of BMSS transmitting notice to Client that the Statement of Work is complete.

2. **Errors, Fraud, Theft, Embezzlement, Illegal Acts** – Unless a Statement of Work specifically obligates BMSS to search for fraud, theft, embezzlement and/or illegal acts, BMSS services cannot be relied upon to disclose errors, fraud, theft, embezzlement or other illegal acts that may exist, nor will we be responsible for the impact on our services of incomplete, missing, or withheld information, or mistaken or fraudulent data provided from any source or sources. However, we will inform you of any material errors, fraudulent financial reporting, or misappropriation of assets that come to our attention.
3. **Client Responsibilities** – BMSS services may include advice and recommendations which you may or may not adopt. Client and where applicable, management, shall be fully and solely responsible for applying independent business judgment with respect to the services and work product provided by BMSS, to make implementation decisions, if any, and to determine further courses of action with respect to any matters addressed in any advice, recommendations, services, reports, or other work product or deliveries to Client. Client is responsible for the safeguarding of assets, the proper recording of transactions in the books of account, the substantial accuracy of the financial records, and the full and accurate disclosure to us of all relevant facts affecting the engagement. Client should retain all the documents, canceled checks, and other data that form the basis of the financial records including income and deductions. If the engagement also includes tax services, these records may be necessary to prove the accuracy and completeness of tax returns to a taxing authority. Client has final responsibility for the tax return(s) and, therefore, will review the return(s) carefully before signing and filing.
4. **Responsible Person** – Client designates the parties signing this Master Services Engagement Letter (“Representative(s)”) as the individual(s) to whom BMSS should look to provide information, communicate, answer questions and make elections. Client understands that BMSS will rely on the Representative(s) designated above and that decisions by the Representative(s) may be beneficial to some and detrimental to others. BMSS is directed to rely on the Representative(s) for all Client decisions including but not limited to tax treatments, allocation of income and expense items, tax elections and accounting treatments. All communication with the Representative(s) are deemed to be communication with Client.
5. **Advice in Writing** – BMSS only provides advice for Client to rely upon in writing. Casual discussions of tax, accounting or other issues and informal communication are not advice upon which Client can rely. Websites, seminars, newsletters and other general information is not advice. Client agrees that the only advice from BMSS upon which Client may rely is written advice received from BMSS on our letterhead or via e-mail.
6. **Unencrypted E-Mail Use Authorized for Communication** – In connection with this engagement, BMSS may communicate with Client or others via e-mail transmission. As e-mails can be intercepted and read, disclosed, or otherwise used or communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed and only to such parties, BMSS cannot guarantee or warrant that e-mails from BMSS will be properly delivered and read only by the addressee. Therefore, BMSS specifically disclaims and waives any liability or responsibility whatsoever for interception or unintentional disclosure or communication of e-mail transmissions or for the unauthorized use or failed delivery of e-mails transmitted by BMSS in connection with the performance of this engagement. In that regard, Client agrees that BMSS shall have no liability for any loss or damage to any person or entity resulting from the use of e-mail transmissions, including any consequential, incidental, direct, indirect, or special damages, such as loss of revenues or anticipated profits, or disclosure or communication of confidential or proprietary information. During

the term of this engagement Client may elect by notification in writing to BMSS to suspend or terminate the use of e-mail.

7. **Cooperation** – Client agrees to cooperate with BMSS in the performance of BMSS services for the Client, including providing BMSS with reasonable facilities and timely access to Client’s data, information and personnel. Client shall be responsible for the performance of Client’s employees and agents and for the accuracy and completeness of all data and information provided to BMSS for purposes of this engagement. In the event that BMSS is unable to obtain required information on a timely basis BMSS may revise its estimate of fees, alter the services required and/or terminate the engagement.
8. **Independent Contractor** – Client and BMSS are both independent contractors and neither Client nor BMSS are, or shall be considered to be, an agent, distributor or representative of the other. Neither Client nor BMSS shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf, or in the name of, the other.
9. **Payment of Invoices** – BMSS will bill Client for professional services, expenses, and out-of-pocket costs on a monthly basis. Payment is due within 30 days of the date on the billing statement. BMSS reserves the right to suspend work or terminate the engagement in the event that payment is not received within 30 days of the date on the billing statement. BMSS may also suspend work or terminate the engagement if information furnished is not satisfactory for BMSS to perform work on a timely basis and as otherwise provided in this letter. BMSS will notify Client if work is suspended or terminated. If BMSS elects to terminate the engagement for nonpayment or for any other reason provided for in this letter, the engagement will be deemed to have been completed for purposes of payment being due from Client. Upon written notification of termination, even if BMSS has not released work product, Client will be obligated to compensate BMSS for all time expended and to reimburse BMSS for all out-of-pocket costs through the date of termination. Suspension of work or termination of the engagement may result in missed deadlines, penalties/interest along with other consequences and Client agrees that suspended work or termination of the engagement shall not entitle Client to recover damages from BMSS. All fees, charges and other amounts payable to BMSS hereunder do not include any sales, use, value added or other applicable taxes, tariffs or duties, payment of which shall be the sole responsibility of Client, excluding any applicable taxes based on BMSS’s net income or taxes arising from the employment or independent contractor relationship between BMSS and BMSS’s personnel. A late payment charge of 1½% per month will be assessed on any balance that remains unpaid after deduction of current payments, credits, and allowances after 30 days from the date of billing. This is an Annual Percentage Rate of 18%.
10. **Confidential & Proprietary Information** – Client and BMSS both acknowledge and agree that all information communicated by one party (the “Disclosing Party”) to the other (the “Receiving Party”) in connection with this engagement shall be received in confidence, shall be used only for purposes of this engagement, and no such confidential information shall be disclosed by the Receiving Party or its agents or personnel without the prior written consent of the other party. Except to the extent otherwise required by applicable law or professional standards, the obligations under this section do not apply to information that: (a) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, (b) was known to the Receiving Party or had been previously possessed by the Receiving Party without restriction against disclosure at the time of receipt thereof by the Receiving Party, (c) was independently developed by the Receiving Party without violation of this engagement letter or (d) Client and BMSS agree from time to time to disclose. Each party shall be deemed to have met its nondisclosure obligations under this paragraph as long as it exercises the same level of care to protect the other’s information as the party uses to protect their own information, except to the extent

that applicable law, regulations or professional standards impose a higher requirement. BMSS may retain, subject to the terms of this Paragraph, one copy of Client's confidential information required for compliance with applicable professional standards or internal policies. If either Client or BMSS receives a subpoena or other validly issued administrative or judicial demand requiring it to disclose the other party's confidential information, such party shall (if permitted to do so) provide written notice to the other of such demand in order to permit it to seek a protective order. So long as the notifying party gives notice as provided herein, the notifying party shall be entitled to comply with such demands to the extent permitted by law, subject to any protective order or the like that may have been entered in the matter. BMSS's techniques, judgments, methodology and practices relating to its engagement practices are agreed by Client and BMSS to constitute proprietary confidential business information in the nature of trade secrets, security measures, systems and procedures which are in the nature of competitive interests which would impair the competitive business of BMSS should the information be released.

11. **Disclosures** – Certain communications involving advice are privileged and not subject to disclosure. By disclosing the contents of those communications to anyone, or by turning over information about those communications to the government, Client, Client's employees or Client's agents may be waiving this privilege. To protect this right to privileged communication, please consult with BMSS or an attorney prior to disclosing any information about BMSS advice. Should Client determine that it is appropriate for BMSS to disclose any potentially privileged communication; Client agrees to provide BMSS with written, advance authority to make that disclosure.
12. **Force Majeure** – Neither Client nor BMSS shall be liable for any delays resulting from circumstances or causes beyond our reasonable control, including, without limitation, fire, storm, flood or other casualty, act of God, strike or labor dispute, epidemic, war, civil unrest or other violence, or any law, order or requirement of any government agency or authority.
13. **Document Retention and Ownership** – The parties agree that BMSS will endeavor to retain documents and records for a period of seven years after the conclusion of the rendering of services for any particular annual period or year. Client accepts that seven years after services are performed, documents and records may not be available. However, the related engagement records will not be destroyed regardless of the retention period, if BMSS has knowledge of potential or pending legal action and/or investigation by a regulatory agency, and it has been determined by the Firm that the records in question are relevant to said legal action and/or investigation. If it is determined that the records in question are relevant to the legal action and/or investigation, the Firm will impose a litigation hold on the records thereby suspending the scheduled destruction of the records. As potential or pending legal action or an investigation may not be public knowledge, we request that you inform us of any such legal action or investigation in a timely manner. Likewise, we request that you inform us when all legal action or investigation has been concluded so that the Firm can release the litigation hold and the records related to our engagement can be destroyed in accordance with our Record Retention and Destruction Policy. BMSS does not retain original client records or documents. Records prepared by us specifically for you as part of this engagement (for example, financial statements and other financial reports, tax returns, general ledgers, depreciation schedules, etc.) and other supporting records prepared by us (for example, adjusting entries and related support, data combining schedules, calculations supporting amounts in tax returns and financial statements, letters, memos and electronic mail, etc.) will remain part of the engagement records. Some of the records kept by BMSS may be in a format that is usable only by certain licensed programs. BMSS has no obligation to provide conversion of records to a Client usable format or an obligation to provide access to programs that make such records usable. When any records are returned or provided to you, it is your responsibility

to retain and protect them for possible future use, including potential examination by any government or regulatory agency. BMSS owns and retains the rights to BMSS's internal working papers. In the event that documents are requested by the Representative or any other individual considered by law or regulation to be our client we will furnish the documents readily available in the Client file (which shall not include any obligation on BMSS's part to undertake a search of BMSS's electronic document and email files) to the requesting party.

- 14. Professional Standards** – BMSS will perform this engagement in accordance with the professional standards applicable to the engagement including those standards promulgated by the American Institute of Certified Public Accountants. In the event that issues arise that present a conflict of interest and/or a potential for breach of professional standards it may become necessary to terminate or suspend services for a particular Statement of Work. We will notify you if this issue arises.
- 15. Use of Third-Party Providers** – In the normal course of business, BMSS uses the services of third parties and individual contractors, which are not employees of BMSS. Those services are performed at various levels and in various aspects of BMSS's engagements including bookkeeping, tax return preparation, consulting, audit and other attest services and clerical and data entry functions. It is possible that during the course of the engagement BMSS may utilize such third-party and individual contractor sources. Additionally, the engagement will, of necessity, require BMSS to handle confidential information and BMSS expects third-party service providers and individual contractors to maintain the confidentiality of such information. To be reasonably assured that unauthorized release of confidential client information does not occur, BMSS requires those individuals and third-party service providers to enter into a written agreement to maintain the confidentiality of such information. Client acceptance of this arrangement acknowledges and accepts our handling of confidential Client information including access by third-party and individual service providers.
- 16. Limitation of Liability and Actions** – Neither party may assert against the other party any claim in connection with this engagement unless the asserting party has given the other party written notice of the claim within one (1) year after the asserting party first knew or should have known of the facts giving rise to such claim. Notwithstanding anything to the contrary, BMSS's maximum aggregate liability for all services performed to Client during the term of the Master Services Engagement Letter (regardless of the nature of the any claim asserted, including contract, statute, any form of negligence, tort, strict liability or otherwise and whether asserted by Client, BMSS or others) shall be limited to twice the sum of the fees paid to BMSS during the last full annual term of this Master Services Engagement Letter prior to initiation of an action against BMSS. In no event shall BMSS be liable for consequential, incidental, special or punitive loss, damage or expense (including, without limitation, lost profits, opportunity costs, etc.) even if BMSS had been advised of their possible existence. This provision shall survive the termination of this Master Services Engagement Letter.
- 17. Employees** – Both Client and BMSS agree that they will not employ any employee of the other within one year of the employee's last day of employment with the other without express written consent of the former employer. Employment of a former employee within one year of the employee leaving the other party may cause significant economic losses and/or breach of professional standards for BMSS and potential economic loss and/or potential conflicts of interest for Client.
- 18. Posting and Distribution of Information** – Both BMSS and Client agree that work product may be shared with the Client's auditor, management, or others. However, BMSS's permission is required prior to public distribution or posting of BMSS work product. If Client plans to publicly distribute or post online any of BMSS's work product, a copy of the document, reproduction master or proof will be submitted to BMSS not less than seven days prior to intended distribution or posting to provide BMSS sufficient time for reading and approval prior to distribution or posting. If, in our professional

judgment, the circumstances require, we may withhold our written consent. Client agrees that prior to posting an electronic copy of any of BMSS's work product, including but not limited to financial statements and our report(s) thereon, that Client will ensure that there are no differences in content between the electronic version posted and the original signed version provided to management by BMSS.

19. **Notice/Waiver** – The parties agree that notice is effective between the parties is made through any of the following: E-mail acknowledged as received by the party to which it was addressed, Certified Mail to the most recent address of the parties, hand delivery of written document via courier. No waiver of any provision of this Master Services Engagement Letter will constitute a waiver of any prior, concurrent or subsequent failure of either party to comply with the provision hereof and no waiver will be effective unless made in writing.
20. **Assignment** – Neither BMSS nor Client may assign any of its rights or obligations under the terms of this Master Services Engagement Letter without the prior written consent of the other.
21. **Additional Work** – From time-to-time Client may request that BMSS undertake to complete additional work beyond the scope of the work described in an accompanying Statement of Work. In the event that such work is undertaken without a separate written Statement of Work understanding then the terms of this Master Services Engagement Letter shall govern the additional work.
22. **Entire Understanding** – This Master Services Engagement Letter constitutes the entire understanding between the parties regarding the BMSS services and supersedes all prior understandings relating to BMSS services. No amendment, modification, waiver or discharge of the terms of this Master Services Engagement Letter shall be valid unless in writing and signed by authorized representatives of both BMSS and Client. This understanding has been entered into solely between Client and BMSS, and no third-party beneficiaries are created hereby. In the event any provision(s) of the terms of this document shall be invalidated or otherwise deemed unenforceable, such finding shall not cause the remainder of this document to become unenforceable. In the event that the arbitration provisions of this document are not applicable, the proper venue for all actions involving the relationship between BMSS and Client are the tribunals of principal jurisdiction in Jefferson County, Alabama. This engagement and the relationship between the parties shall be construed and enforced in accordance with, and governed by, Alabama law without giving effect to Alabama's choice of law principles. This document may be transmitted in electronic format and shall not be denied legal effect solely because it was formed or transmitted, in whole or in part, by electronic record; however, this document must then remain capable of being retained and accurately reproduced, from time to time, by electronic record by the parties and all other persons or entities required by law. An electronically transmitted signature or acknowledgment will be deemed an acceptable original for purposes of binding the party providing such electronic signature.

The foregoing reflects the understanding for rendering of professional services:

BMSS, LLC

City of Huntsville

BMSS, LLC

By: _____
Date: _____

November 15, 2022

City of Huntsville
308 Fountain Circle SW
Huntsville, Alabama 35801

Statement of Work Under Master Services Engagement Letter (SOW)

This Statement of Work is a memorialization of the understanding between BMSS and City of Huntsville for services to be performed under the terms of the most recent Master Services Engagement Letter entered into by BMSS and City of Huntsville as of the date of this SOW. BMSS, LLC is pleased to provide City of Huntsville with professional services. This letter confirms our understanding of the services we are to provide for City of Huntsville for the year ended December 31, 2022 unless otherwise modified. The engagement between City of Huntsville and our firm will be governed by the terms of this letter and the Master Services Engagement Letter, to the extent that any terms conflict, the terms of the SOW shall control.

In order to better understand each party's obligations, the terms 'we, us, our and BMSS' will identify the firm of BMSS, LLC. The terms 'you, your, Client and Company' will apply to City of Huntsville.

BMSS, LLC and Client agree as follows:

Scope of Services

BMSS, LLC will provide Consulting services as requested by the Client as identified and described in Attachment A. Client will be responsible for providing these written Statement of Work (email acceptable) descriptions for BMSS LLC support. All Services will be performed on an as needed basis.

Client is responsible for making management decisions and performing management functions, and for designating an individual with suitable skill, knowledge, or experience to oversee any bookkeeping services, tax services, or other services we provide. Client is responsible for evaluating the adequacy and results of the services performed and accepting responsibility for such services. Client is responsible for establishing and maintaining internal controls, including monitoring ongoing activities.

Client is responsible for the safeguarding of assets, the proper recording of transactions in the books of accounts, the substantial accuracy of the financial records, and the full and accurate disclosure of all relevant facts affecting the deliverable.

Jonathan Hall and **Jamey Carroll** have been assigned the role of engagement members and are responsible for directing the engagement.

Location of Services

BMSS, LLC will perform these services from either the Client's facilities or BMSS, LLC facilities as necessary to complete services.

Billing Rates

The billing rates for these consulting services will be based a blended rate of \$200 per hour with a total amount not to exceed \$20,000. BMSS, LLC reserves the right to bill any hour of Service, or part thereof, at a reduced rate. The Client agrees that if any hours of Services, or part thereof, is billed at a reduced rate, that does not change the normal billing rate for any previous or subsequent hours, or parts thereof.

Termination

BMSS, LLC may withdraw from this Engagement, at our discretion, if Client does not provide us with information we request in a timely manner, refuses to cooperate with our reasonable requests, or misrepresents any facts. Our withdrawal will release us from any obligation to complete any open services and will constitute completion of our Engagement.

Additional Services

Client may request that BMSS, LLC undertake additional work. In the event that a separate SOW is not entered into between us, the scope of the engagement described herein may be altered by writings between us evidencing an understanding of additional work, and that work shall be governed by the terms of this SOW.

A separate SOW will be executed for bookkeeping or financial statement services.

Sincerely,

BMSS, LLC

BMSS, LLC

RESPONSE:

This letter correctly sets forth the understanding City of Huntsville:

Officer signature: _____

Title: _____

Date: _____

ATTACHMENT A – Statement of Work

BMSS will assist City of Huntsville with following:

- Detailed analysis and reconciliation of cash bail bonds, including:
 - Detailed analysis of the liability account from general ledger and municipal court software.
 - Determine appropriate 9/30/22 balance.
 - Provide documentation to support balance.
 - Update or write procedures for reconciliation.
 - Make suggestion for improvements in the process.
- Detailed analysis and reconciliation of deposits held for planning commission bonds, including:
 - Detailed analysis of the liability account from general ledger, Clerk/Treasurer and Planning records.
 - Determine appropriate 9/30/22 balance.
 - Provide documentation to support balance.
 - Update or write procedures for reconciliation.
 - Make suggestion for improvements in the process.
- Detailed analysis and reconciliation of developer performance bonds, including:
 - Detailed analysis of the liability account from general ledger, Clerk/Treasurer and Planning records.
 - Determine appropriate 9/30/22 balance.
 - Provide documentation to support balance.
 - Update or write procedures for reconciliation.
 - Make suggestion for improvements in the process.