

**AGREEMENT  
AS TO THE PROVISION OF  
TOWN ATTORNEY LEGAL SERVICES FOR THE  
TOWN OF MASON, TENNESSEE**

**THIS AGREEMENT** ("Agreement") represents the understanding between the **Town of Mason** (the "Town"), a municipal corporation, and **Burch Porter & Johnson, PLLC** ("BPJ") regarding the services to be provided as the Town Attorney and compensation for time and expenses related thereto effective on the date signed by the last signing party.

**WHEREAS**, the Town desires to appoint BPJ as the Town Attorney for the purpose of providing legal guidance to the Town as set forth herein;

**WHEREAS**, as set forth below, the Town further intends to use the legal services of BPJ, including its partners, associates, and paralegal staff, to support the performance of the Town Attorney's position and official duties;

**WHEREAS**, BPJ shall serve as the primary provider to the Town and to perform the role of Town Attorney.

**A. Acceptance of Appointment**

By signing this Agreement, BPJ hereby accepts the appointment as Town Attorney. The Town Attorney shall provide quality services in an efficient and economical manner. In addition, the Firm accepts appointments to serve in the role of Town Attorney through its partners, associates, and paralegal and other administrative staff in the performance of his duties as set forth and in accordance with the terms herein. The Town Attorney shall follow all requirements as prescribed by the Town of Mason Charter.

**B. Legal Services**

The Town Attorney shall provide general legal and other services to the Town including, but not limited to, the following:

1. Legislative work associated with Board of Mayor & Aldermen ("BMA") meetings, including preparation or review of ordinances and resolutions, and written policies and procedures, together with research work, as necessary, associated with the preparation of those documents. This activity shall include providing assessments of legal likelihoods in support of Town risk analyses.
2. Prepare oral and written opinions on legal matters as required by the BMA.

3. Negotiate and prepare agreements, leases, contracts and similar documents.
4. Perform investigations that may require interviewing witnesses, taking testimony, review of reports, and legal research.
5. Provide legal counseling, guidance and opinions to the Town regarding the operations of the Town.
6. Participate in meetings and/or telephone conferences with the Town.
7. Provide staff assistance, legal research and counseling related to the acquisition or sale of real property, preparation of leases, deeds and easements; utility franchise agreements; referendum questions, agreements, surety/performance/payment bonds, insurance policies, bills of sale, liens, waivers, subordinations, and other legal instruments; risk management; grant guidelines; arbitration; and other matters as necessary requiring legal advice.

Perform other professional duties as may be required including, but not limited to, conducting legal research as required for the performance of duties in representing the Town.

8. File petitions to abate a public nuisance on behalf of the Town.
9. As requested, serve as legal counsel to the BMA, Planning Commission and any other board, commission, and/or authority as prescribed by state or local law.
10. Handle petitions, or other Town business, as requested, in the Town of Mason Municipal Court.
11. The Town Attorney will keep Town informed as to the progress and status of all pending matters. The Town Attorney is expected to manage, control and oversee the delivery of legal services in a competent, professional, and cost-effective manner. All legal services shall be properly supervised, and all personnel shall be qualified to handle the work assigned. If outside special counsel is retained, unless otherwise directed by the BMA, such special counsel shall be supervised by the Town Attorney.
12. Assist with all other legal matters requested by the Town.

**C. Relationship Among Town Attorney and Other Attorneys**

The Town Attorney is the lead attorney for the Town in the provision of the general services described above. As such, the Town Attorney shall work cooperatively with any other attorney(s) retained by the Town, who shall take direction from and be under the Town Attorney's supervision. Moreover, the Firm, including its partners, associates, and paralegal staff, may serve as the Town Attorney.

The Town Attorney will be the initial contact for legal advice and representation for legal work needed by the Mayor, BMA and Town staff. The Town Attorney will determine the most efficient and effective use of in-house attorneys and any outside counsel.

**D. Retaining Other Legal Professionals**

It may be necessary or desirable in certain cases to retain the legal services of others who have expertise in the particular matter under review. Fees incurred by such professionals will be paid directly to the professional providing such services. If the Town Attorney recommends the services of any such professional to be used in this manner, such recommendation shall be submitted to the BMA for review and approval prior to utilization of the professional.

**E. Conduct of the Town Attorney**

The Town acknowledges that the Town Attorney and other attorneys from the Firm are engaged in the private practice of law for compensation, in addition to their legal work for the Town. The Town Attorney and any other attorneys under his supervision will comply with the State bar standards governing the professional conduct of lawyers and will not represent a client in private practice if doing so would constitute a conflict of interest or would impair in any way the attorney's ability to represent the Town and the Town's interests.

**F. Conflict of Interest**

The Firm agrees that it shall not represent clients in matters involving either: litigation or non-litigation against the Town. However, the Firm may have past and present clients or may have future clients, which, from time to time, may have interests adverse to the Town, and the Firm reserves the right to represent such clients in matters not connected with its representation of the Town.

In the event an instance of conflict of interest arises with another client, the Firm will protect the best interests of the Town and will take all necessary actions to resolve or eliminate the conflict situation. If the circumstance cannot be lawfully avoided or resolved, the Firm will undertake to recommend substitute counsel to protect the interests of the Town.

**G. Licenses**

At all times during the term of this Agreement, the Firm shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement, at its own sole cost and expense.

**H. Term and Termination**

This Agreement shall have a term of two (2) years from the date of execution.

This Agreement may be terminated by the Town upon action of the BMA. The parties agree that the BMA will provide notice of potential termination to the Firm and Town Attorney at a minimum of thirty(30) days prior to the termination of services. Should the Town terminate this Agreement, the Town shall pay for any outstanding fees or expenses owing to the Firm and Town Attorney for services rendered.

This Agreement may be terminated by the Firm upon sufficient notice to the Town. Notice of termination shall be given to the BMA by the Firm at a minimum of thirty (30) days prior to termination of services.

**I. Compensation**

1. Compensation shall be as set forth in Exhibit A.
2. Payment of Compensation shall be as set forth in Exhibit A.

**J. Statements**

The Firm shall render to the Town a statement for fees, costs, and expenses incurred on a monthly basis. Such statement(s) shall indicate the basis of the fees, including the hours worked, the hourly rate(s), and a general description of the work performed. Separate billing categories can be established to track costs associated with Town funding categories or to track project costs, or such other basis as the Town may direct. The Town will have the right to request additional notes and documentation as to individual charges.

**K. Assignment and/or Sub Agreements**

The experience, knowledge, capability and reputation of the Firm, its partners, associates, and employees, are a substantial inducement for Town to enter into this Agreement. Therefore, the Firm shall not agree with any other person or entity to perform, in whole or in part, the legal services required under this Agreement without the written approval of the Town. In addition, neither this Agreement, nor any interest herein, may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily, or by operation of law, whether for the benefit of creditors, or otherwise, without the prior written approval of the Town. Adding attorneys to Firm, changes in the partnership, name changes and similar changes shall not be deemed a transfer or assignment requiring approval of Town or amendment hereof.

**L. Independent Contractors**

The Firm is and shall always remain as to the Town a wholly independent contractor. Neither the Town nor any of its officers, employees, servants, or agents shall have control over the conduct of Firm or any of Firm's officers, employees, or agents. The Firm, not at any time or in any manner, represents that it or any of its officers, employees, or agents are in any manner employees of the Town. Town acknowledges and agrees that the Town Attorney and the Firm lawyers will need to represent to others their capacity and relationship to the Town and shall enjoy and apply all rights, powers, and privileges attendant thereto.

Furthermore, nothing contained in this Agreement shall be deemed, construed, or represented by the Town or the Firm to any third person to create a relationship of principal or agent, or of a partnership, or of a joint venture, or of any other association of any kind or nature between the Town and the Firm.

**M. Non-Discrimination**

In connection with the execution of this Agreement, the Firm shall not discriminate against any employee or applicant for employment because of race, religion, marital status, color, sex, handicap, sexual persuasion, or national origin. The Firm shall take affirmative action to ensure that applicants are employed, and that employees are treated fairly during their employment, without regard to their race, religion, color, sex, marital status, handicap, sexual persuasion, or national origin. Such actions shall include, but not be limited to the following: employment, promotion, demotion, transfer, duties

assignment; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**N. Documentation**

The Firm shall maintain complete and accurate records with respect to costs, expenses, receipts, and other such information required by the Town that relate to the performance of services under this Agreement. The Firm shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles, shall be clearly identified, readily accessible and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement.

**O. Claims, Liability and Indemnity**

The Firm shall assume all risk in connection with the performance of this Agreement, and shall be liable for any damages to persons or property resulting from the negligent or willful acts, errors, or omissions of the Firm, its agents, servants, and/or employees in connection with the prosecution and completion of the work covered by this Agreement. The Firm agrees that it will indemnify and hold the Town and its employees harmless from all claims of any type and for any expenses and costs including attorney's fees and court costs which may be incurred by the Town arising from the negligent or willful acts, errors, or omissions of the Firm, its agents, servants and/or employees in the performance of this Agreement. The indemnities set forth herein shall survive the expiration or termination of this Agreement.

1. Professional Responsibility of Firm. The Firm, for itself, its agents, servants, and employees, agrees to perform all professional services hereunder or associated herewith in accordance with all applicable professional standards and in accordance with sound engineering practice and principles.

As to matters of professional liability, the Firm agrees to indemnify and hold harmless the Town, its agents, volunteers, servants, employees and officials from and against all liability, loss, costs, reasonable attorney's fees or other expenses suffered by those indemnified as a result of any claim to the extent that same is found to have been caused by the negligent acts, errors, or omissions of the Firm or those for whom the Firm is legally liable.

2. General Responsibility of Firm. As to all matters of liability related to or arising out of this Agreement other than professional liability, the Firm agrees to indemnify and hold harmless the Town, its agents, volunteers, servants, employees and officials from and against all liability, loss, costs, reasonable attorney's fees or other expenses suffered by those indemnified as a result of any claim to the extent that it is found to have been caused by the acts, errors, or omissions of the Firm or those for the Firm is legally liable.

3. Insurance Coverage. The Firm will carry Commercial General Liability Insurance and Professional Liability Insurance in furtherance of the above indemnification. The Commercial General Liability Insurance shall be issued by a responsible insurance company, in a form acceptable to the Town and provide coverage on an occurrence basis against claims for personal injury or property damage with combined single limits of not less than One Million Dollars (\$1,000,000) for Personal Injury and Property Damage. The Professional Liability Insurance coverage shall be issued by a responsible insurance company and in a form acceptable to the Town and provide coverage in the amount of not less than One Million Dollars (\$1,000,000). The Firm shall provide the Town with Certificates on such policies in forms acceptable to the Town, which Certificates will be furnished to

the Town after execution of this Agreement. The indemnities set forth shall survive the expiration or termination of this Agreement.

The Firm, with prior approval of the Town, may assume the defense of any such professional liability claim made against the Town, its agents, volunteers, servants, employees or officials.

**P. Interpretation of Agreement**

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of Tennessee. In the event of any dispute hereunder, the forum shall be the Shelby County Circuit Court.

**Q. Entire Agreement**

This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements or understandings, oral or written, are hereby merged herein. This Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed, and acknowledged by both of the parties hereto.

**R. Authority**

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that in so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

**S. Governing Law**

This Agreement is being executed and delivered and is intended to be performed in the State of Tennessee, and the laws (without regard to principles or conflicts of law) of such state, and of the United States of America shall govern the rights and duties of the parties hereto in the validity, construction, enforcement and interpretation hereof.

**T. Opportunity for Review**

Each party has received and had the opportunity to review this Agreement, and each party has had the opportunity, whether exercised or not, to have each respective party's attorneys review this Agreement; and, accordingly, the normal rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement.

**U. Notices**

All notices, demands, and requests required or permitted by this Agreement shall be in writing and shall be sent by certified mail, air or other courier, or hand delivery as follows:

- (i) To: Town of Mason

\_\_\_\_\_  
\_\_\_\_\_

- (ii) To: Burch, Porter & Johnson, PLLC  
130 N. Court Avenue  
Memphis, TN 38103

Any notice, demand, or request shall be deemed given for all purposes under this Agreement when received.

Any party to this Agreement may change such party's address for the purpose of notices, demands and requests required or permitted under this Agreement by providing written notice of such change of address to all of the parties, which change of address shall only be effective when notice of the change is actually received by the party who thereafter sends any notice, demand or request.

**V. Severability**

If any provision of this Agreement is held to be unlawful, invalid or unenforceable under present or future laws effective during the terms hereof, such provision shall be fully severable and this Agreement shall be construed and enforced as if such unlawful, invalid, or unenforceable provision were not contained herein by its severance here from. In addition, in lieu of such unlawful, invalid or unenforceable provision, there shall be added automatically as a part hereof a provision as similar in terms to such unlawful, invalid, or unenforceable provisions as may be possible and may be lawful, valid or enforceable. Furthermore, if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other which would render the provision valid, then the provision shall have the meaning which renders it valid.

**W. No Consent to Breach**

No consent or waiver, express or implied, by any party to this Agreement to or of any breach or default by the other party to this Agreement in the performance by such other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default of the same or any other obligations hereunder. Failure on the part of any party to this Agreement to complain of any act or failure to act of any other party to this Agreement, or to declare such party in default, irrespective of how long such failure continues, shall not constitute a waiver by the non-defaulting party of its rights hereunder.

**X. PDF Signatures**

Execution and delivery of this Agreement and all Agreements connected with the transaction set forth herein (the "Collateral Agreements") by delivery of portable document format ("PDF") copy bearing the PDF signature of any party hereto shall constitute a valid and binding execution and delivery of this Agreement and Collateral Agreements by such party. Such PDF copies shall constitute enforceable original documents.

**Y. Other Instruments**

The parties shall execute and deliver all other appropriate supplemental agreements and other instruments and take any other action necessary to make this Agreement fully and legally effective, binding and enforceable as between the parties and as against third parties.

[Signatures to follow on next page]

**IN WITNESS WHEREOF**, the parties have duly executed and delivered this Agreement as of the date below.

**Town of Mason, Tennessee**

**Burch Porter & Johnson, PLLC**

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
Nathan A. Bicks

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Town Clerk

\_\_\_\_\_



## EXHIBIT "A"

### COMPENSATION

1. Billing rates The Firm shall be compensated, apart from reimbursable expenses, as set forth:
  - (a) Members and Senior Attorneys - \$350.00 per hour
  - (b) Associates - \$300.00 per hour
  - (c) Paralegals - \$110.00 per hour
- 1.1 Compensation may be adjusted over the course of the term of the Agreement. Rate will be adjusted as mutually agreed upon.

Reimbursable Expenses. In addition to the foregoing, Firm would be reimbursed for out-of-pocket expenses including messenger, courier, and other communication costs; reproduction expense; computer research services; court reporters; mileage cost to court and administrative proceedings; travel expenses outside of Shelby County; and other costs and expenses incurred on Town's behalf. No major out-of-pocket expenses (in excess of \$250) shall be incurred by the firm without prior approval of the Town. Notwithstanding the foregoing, the Firm will not charge for word processing, routine computer-assisted legal research and local calls. In exchange, when on-site, the Firm would have the ability to use Town copiers and telephones without charge.

The Firm shall submit monthly invoices to the Town for all services provided and costs incurred pursuant to the terms of this Agreement and per pricing established in Exhibit A.

The Firm shall render to the Town a statement for fees, costs, and expenses incurred on a monthly basis. Such statement(s) shall indicate the basis of the fees, including the hours worked, the hourly rate(s), and a brief description of the work performed. Separate billing categories will be established to track costs associated with Town funding categories or to track project costs, or such other basis as the Town may direct. Reimbursable costs shall be separately itemized. The Town will have the right to request additional notes and documentation as to individual charges.

Payment to Firm shall be made by the Town within thirty (30) days of receipt of the invoice, except for those specific items on the billing which are contested or questioned and returned by the Town with written response to any invoice contested or questioned and further, upon a request of Town, provide the Town with any and all documents related to the service or costs. No charge shall be made for time expended in providing this information to the Town.