

**COMPREHENSIVE PLAN FOR SUSTAINABLE GROWTH MANAGEMENT AND DEVELOPMENT
CONSULTING SERVICES CONTRACT**

This Comprehensive Plan for Sustainable Growth Management and Development Consulting Services Contract (hereinafter referred to as “Contract”) is between **BLOUNT COUNTY GOVERNMENT**, with registered address at 385 Court St., Maryville, Tennessee 37804 (hereinafter referred to as “COUNTY”) and **S&ME, INC.**, with registered address at 2724 Discovery Drive, Suite 120, Raleigh, North Carolina 27616 (hereinafter referred to as “CONSULTANT”).

The COUNTY and CONSULTANT may be referred to individually as a “Party” or collectively as the “Parties” to this Contract.

WHEREAS, the COUNTY would like to engage the services of consultant for the purpose of providing professional services to the COUNTY in relation to the creation of a comprehensive plan, which plan shall serve as the guiding document for sustainable growth management and development for Blount County’s next twenty years;

WHEREAS, CONSULTANT represented to the COUNTY that it is qualified to do business with the COUNTY and is able to provide the above-mentioned services;

NOW THEREFORE, in consideration of the representations and mutual covenants herein, the Parties agree to enter into this Contract, with the following terms and conditions, including those in the attached annexes:

I. Definition of Terms

A. The following terms used in this Contract shall be defined as follows:

1. **“Contract”** means this Contract, including the annexes herein attached, the Request for Proposal (RFP) No. 2023-0031 (entitled “Comprehensive Plan for Growth Management and Development for Blount County, TN”) package and all the documents included in or supplied with said RFP package to which RFP the CONSULTANT participated or responded to, and any and all additional annexes and sub-annexes that herein Parties later on agree to be incorporated with this Contract.
2. **“Services”** means the services to be performed by CONSULTANT for the COUNTY as stated in Annex A – Statement of Work herein.
3. **“Specifications”** includes instructions to CONSULTANT, the terms, conditions, definitions and technical specifications of the Services stated in Annex A – Statement of Work herein.

4. **“Statement of Work”** (“SOW”) means the document attached in this Contract as Annex A, specifying the instructions to CONSULTANT, the terms, conditions, definitions and technical specifications of the Services to be performed for the COUNTY.
 5. **“Subcontractor”** means a person, firm or corporation having a contract with the CONSULTANT to furnish labor and/or materials, or who performs services in relation to the Services under this Contract.
- B. Unless specifically defined under this Contract and herein annexes, the National Institute of Governmental Purchasing (NIGP) Online Dictionary of Procurement Terms, at www.nigp.org will govern on questions as to any other definition in this Contract.

II. Order of Preference

- A. This Contract document incorporates all the annexes herein, the COUNTY Request for Proposal (RFP) No. 2023-0031 package and all the documents included in or supplied with said RFP package to which RFP the CONSULTANT participated or responded to, and any and all additional annexes that herein Parties later on agree to be incorporated with this Contract.
- B. In case of conflict in the terms and conditions of this Contract document and the incorporated annexes, the COUNTY RFP package and the documents included in or supplied with said RFP package mentioned above, and any and all additional annexes later on incorporated into this Contract, the following order of precedence shall apply:
1. This Contract
 2. The Statement of Work (Annex A herein)
 3. The other annexes in this Contract
 4. The additional annexes later on incorporated into this Contract
 5. The COUNTY Request for Proposal (RFP) No. 2023-0031 package
 6. The documents included in or supplied with the RFP package to which RFP the CONSULTANT participated or responded to.
- C. Notwithstanding the above or anything else in this Contract, each and every provision of laws and clauses required by law to be inserted in this Contract shall be deemed to be inserted herein and shall take precedence over any contrary provision in the Contract or in the annex/es.

III. Effectivity and Duration of the Contract

This Contract shall be effective on the date of last signature of herein Parties (“Effective Date”) and shall continue to be in full force and effect until June 30, 2028, unless the COUNTY gives the CONSULTANT a written notice of intent to terminate, which notice shall include the effective date of termination.

IV. Scope of Work

- A. CONSULTANT shall provide the Services and all deliverables as required, described and detailed in Annex A – Statement of Work (SOW) herein and shall meet all service and delivery timelines as specified therein, or in the absence of such specification, as soon as good practice and due diligence reasonably permit.
- B. The COUNTY assumes no obligation for services performed by CONSULTANT in addition to the Services specifically written under the SOW even if said additional services benefited the COUNTY. Any unauthorized performance of services is subject to the COUNTY's rejection and it may hold CONSULTANT solely accountable for undoing such performed services.
- C. CONSULTANT understands and agrees that the COUNTY has executed and may execute contracts with other parties for services the same as or similar to those described under this Contract. This Contract does not grant the CONSULTANT any exclusive right to perform the Services hereunder. The COUNTY does not guarantee to engage the CONSULTANT for any minimum scope of work. Subject to the terms and conditions of this Contract, CONSULTANT shall only be paid for the Services provided under the SOW after the COUNTY issues a Purchase Order to CONSULTANT or as otherwise specified by this Contract. Authorization to perform Services covered by the SOW shall be made via Purchase Order signed by Blount County Purchasing Agent and Finance Director or other designated personnel.
- D. CONSULTANT shall furnish all reports and deliverables required in the SOW and in accordance with the terms set forth therein.
- E. CONSULTANT shall report any identified operational risks and the potential level of risk severity associated with any of the Services or deliverables under this Contract. CONSULTANT shall recommend mitigation or resolution strategies to manage or eliminate such identified risks at no further cost to the COUNTY.

V. Performance of Services

- A. Time is of the essence in the delivery of Services under this Contract. To ensure adequate service level to the people of Blount County, the COUNTY requires that the Services under this Contract shall be performed strictly in accordance with the specifications and timeline written in the SOW. If performance is not made based on such agreed specifications and timeline, the COUNTY reserves the right to terminate this Contract and hold CONSULTANT accountable therefore. Notwithstanding the above, the COUNTY retains the right to require the CONSULTANT to re-perform the Services at no additional cost to the COUNTY. Such re-performance shall in no way affect the COUNTY's discount privileges or exclude any other legal, equitable or contractual remedies that the COUNTY may have therefore.

- B. Performance duration when stated as calendar days shall include Saturdays, Sundays and holidays. If stated as business days shall exclude Saturdays, Sundays and holidays.

VI. Right to Inspect

The COUNTY reserves the right to make periodic inspections of the manner and means the Services are performed under this Contract.

VII. Acceptance

Performance of Services shall be completed to the COUNTY's satisfaction. No services performed by CONSULTANT shall be deemed accepted until the COUNTY has had reasonable opportunity to inspect or evaluate the final outcome or output in accordance with the specifications in the SOW. The COUNTY's acceptance of the performed Services shall be in writing.

VIII. Changes to Services

Either Party may request to change the scope of Services under the SOW. In such case, the proposing Party shall send a written Change Request to the other Party specifying the change/s desired. Any agreed change/s in scope of Services herein shall be considered an amendment of the SOW. Any amendment to the SOW shall only be made in writing signed by the authorized signatories of the Parties herein. The CONSULTANT shall not start any work under this Clause without said written agreement on the changes.

IX. Subcontracting

- A. CONSULTANT shall not enter into any subcontracting Contract with anyone for the Services under this Contract unless approved in writing by the COUNTY.
- B. For the avoidance of doubt, CONSULTANT shall remain directly responsible to the COUNTY for the delivery or performance of Services under this Contract even if such Services is subcontracted in whole or in part with the approval of the COUNTY.

X. Payment

- A. In consideration for the performance of the Services, the COUNTY shall pay CONSULTANT the fees written in the SOW (the "Services Fee").

- B. CONSULTANT shall send all invoices addressed to COUNTY's Purchasing Agent and/or to any other COUNTY employee or officer as may be advised in writing by the COUNTY. Purchasing Agent's address is at Blount County, TN Court House, 385 Court Street, Maryville, Tennessee 37804.
- C. The COUNTY shall pay CONSULTANT within thirty (30) days from invoice date, provided that the invoice is undisputed. Invoices shall contain the following information: purchase order number, item number, contract description of supplies or services, quantities, unit prices and extended totals. Delay in receiving invoices and errors in omissions on statements or invoices will be considered just cause for withholding payment without losing privileges.
- D. Notwithstanding any other payment provision of this Contract, CONSULTANT's failure to submit required reports when due, or failure to perform or document the performance of Services, may result in withholding of payment. Such withholding of payment for cause shall continue until CONSULTANT submits required reports, performs required Services or establishes, to the COUNTY's satisfaction, that such failure arose out of causes beyond the control, and without the fault or negligence of the CONSULTANT.
- E. Any language contained on any invoice or other document furnished by CONSULTANT at any time and the acceptance by the COUNTY of the Services (in whole or in part) accompanied by any such document shall not be construed as an acceptance by the COUNTY of any terms or conditions contained in such document which are inconsistent with the terms and conditions set forth in the SOW. Any different or additional terms contained in the CONSULTANT's acceptance are hereby objected to.
- F. Any payment made by the COUNTY shall not prejudice its right to object to or question any payment, invoice, or other matter, nor shall it be construed as acceptance by the COUNTY of the Services provided, in whole or in part.
- G. The COUNTY reserves the right to deduct from any amount due to CONSULTANT for the Services performed any and all amount/s that is/are or shall become due and payable to the COUNTY by the CONSULTANT.
- H. All final invoices must be submitted to the COUNTY within thirty (30) days of termination of Services under the SOW. Invoices received after thirty (30) days shall not be processed for payment.

XI. Taxes

- A. Purchases by the COUNTY are not subject to any state sales or federal excise taxes. Taxes shall not be included in the invoices submitted by CONSULTANT to the COUNTY. CONSULTANT is solely responsible for determining the applicability of such tax exemption

when setting forth the prices under this Contract. CONSULTANT is not permitted to rely on any formal or informal or official or unofficial representation(s) by the COUNTY or its representatives concerning the scope of materials and equipment which may or may not be exempt from sales or use taxes. No price adjustments or allowances will be made for CONSULTANT's pricing in the event CONSULTANT failed to include, or properly calculate the applicable taxes under this Contract for which the exemption does not apply.

B. Exemption certificates shall be furnished by the COUNTY upon CONSULTANT's request.

XII. Appropriation

In the event that no funds are appropriated by the COUNTY for the Services specified in any fiscal year or insufficient funds exist to purchase such Services or in the event that funds under federal award are discontinued by the awarding agency for any reason, then this Contract shall automatically expire upon the COUNTY's notice to CONSULTANT and upon the expenditure of previously appropriated funds or the end of the current fiscal year, whichever comes first, with no further obligations owed to or by either Party. Should the COUNTY exercise its right to terminate this Contract due to unavailability of funds, CONSULTANT shall have no right to recover from the COUNTY any actual, general, special, incidental, consequential, or any other damages of any description or amount.

XIII. Representations and Warranties

CONSULTANT represents and warrants that:

1. It has all licenses and permits necessary to conduct its business in Tennessee and with the COUNTY and to perform its obligations under this Contract. Further, CONSULTANT shall comply in all material respects with all applicable federal, state and local statutes, regulations, codes, ordinances and policies in performing its obligations under this Contract.
2. It has the necessary knowledge, experience, abilities, skills and resources to perform the Services and its obligations under this Contract.
3. CONSULTANT and its agents, employees and subcontractors shall endeavor to perform the Services for the COUNTY with that degree of care and skill ordinarily exercised, under similar circumstances, by consultants practicing in the same discipline at the same time and location. In the event any portion of the Services fails to substantially comply with this standard of care obligation and CONSULTANT is promptly notified in writing prior to one year after completion of such portion of the Services, CONSULTANT will re-perform such portion of the Services, or if re-performance is impractical, CONSULTANT will refund the amount of compensation paid to CONSULTANT for such portion of the

Services.

4. The proposal/s submitted is/are, in all respects, fair and without fraud, made without collusion with any official of the COUNTY; and that the proposal/s is/are made without any collusion with any person or entity making another proposal to the COUNTY.
5. Its organizational and work systems and processes shall at all times protect against discrimination for employees, applicants for employment, and subcontractors on the grounds of actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids, or due to limited English proficiency.
6. CONSULTANT's signatory in this Contract is the duly authorized representative of CONSULTANT, has been authorized by CONSULTANT to make all representations, attestations, and certifications contained in this Contract and said incorporated documents, and to execute this Contract and such incorporated documents on behalf of CONSULTANT.
7. It is solely responsible for and shall have control over the means, methods, techniques, sequences and procedures of performing the Services, subject to the plans and specifications in the SOW and shall be solely responsible for the errors and omissions of its employees, agents, subcontractors or representatives.
8. It shall comply with all laws relating to this Contract.
9. All information disclosed or submitted to the COUNTY during the Request for Proposal for the Services herein are true, correct and complete and CONSULTANT shall keep up to date the information provided to the COUNTY and in the latter's Purchasing and Financial management system.
10. The COUNTY is authorized to possess and use all materials, equipment, software and/or all deliverables under this Contract.
11. The deliverables written in the SOW and the sale or use of them will not infringe upon any U.S. or foreign patent.
12. It shall immediately disclose to the COUNTY any and all information regarding any current or pending litigation that CONSULTANT or its owners/principals have been involved with for the last five (5) years. This responsibility shall continue throughout the term of this Contract.

XIV. Ownership of Deliverables

All right, title, interest in and to the deliverables (including modifications thereof) under this Contract, including without limitation all copyrights, patents, trade secrets, and other intellectual property and other proprietary rights embodied by and arising out of the deliverables hereunder, shall belong to the COUNTY. If any CONSULTANT property is contained in any of the deliverables, CONSULTANT hereby grants the COUNTY a royalty-free, paid-up, non-exclusive, perpetual license to use such CONSULTANT property in connection with deliverables under this Contract. To the extent such rights do not automatically belong to the COUNTY, CONSULTANT hereby assigns, transfers and conveys all right, title and interest in and to the deliverables, including without limitation all copyrights, patents, trade secrets, and other intellectual property and other proprietary rights embodied by and arising out of the deliverables hereunder.

XV. Intellectual Property Indemnity

CONSULTANT agrees to indemnify and hold harmless the COUNTY (which includes its officers, employees, agents, authorized representatives or assigns) from and against any and all claims or suits which may be brought against the COUNTY concerning or arising out of any claim for infringement upon any US or foreign patent, copyright, trade secret or other intellectual property. In any such claim or action brought against the COUNTY, CONSULTANT shall satisfy and indemnify the COUNTY for the amount of any settlement or final judgment, and CONSULTANT shall be responsible for all legal or other fees or expenses incurred by the COUNTY arising from any such claim. The COUNTY shall give CONSULTANT notice of any such claim or suit. However, the failure of the COUNTY to give such notice shall only relieve CONSULTANT of its obligations under this Section to the extent CONSULTANT can demonstrate actual prejudice arising from the COUNTY's failure to give notice.

XVI. Certifications

The COUNTY understands and agrees that CONSULTANT's deliverables are limited to an expression of professional opinion based on the Services performed by the CONSULTANT. In addition, the COUNTY agrees that CONSULTANT will not be required to execute any document that would result in certifying, guaranteeing or warranting the existence of conditions whose existence the CONSULTANT cannot reasonably ascertain.

XVII. Insurance

- A. At no cost to the COUNTY, CONSULTANT shall carry insurance coverage as specifically required in the SOW. Such insurance coverage shall be with a reputable insurer acceptable to the COUNTY.

- B. CONSULTANT shall immediately furnish the COUNTY with written evidence of such insurance coverage as required in the SOW. CONSULTANT's failure to maintain or submit evidence of insurance coverage is considered to be a material breach of this Contract, which may be a ground to terminate this Contract, or for the COUNTY to withhold any payment, without prejudice to such other rights that the COUNTY may have under this Contract or any applicable law.
- C. CONSULTANT agrees that the insurance requirements under this Contract do not reduce or limit any liability the CONSULTANT has assumed under this Contract, including any indemnification or hold harmless requirements.

XVIII. Records

CONSULTANT shall keep all records, books and documents pertaining to the Services and all charges under this Contract. Such records, books and documents shall be maintained for a period of five (5) years from the conclusion/closing of the Services and/or the date of payment, whichever is later, and shall be subject to audit at any reasonable time and upon reasonable notice by the COUNTY to CONSULTANT.

XIX. Confidentiality

- A. All material and information, regardless of form, medium or method of communication, provided to CONSULTANT by the COUNTY or acquired by CONSULTANT on behalf of the COUNTY regarded as confidential under county, state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit CONSULTANT to disclose any Confidential Information, regardless of whether it has been disclosed or made available to CONSULTANT due to intentional or negligent actions or inactions of employees, agents or representatives of the COUNTY or third parties. Confidential Information shall not be disclosed except as required or permitted under county, state or federal law or this Contract. CONSULTANT shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable county, state and federal law and this Contract.
- B. The obligations set forth in this Section shall survive the termination of this Contract.

XX. Independent Contractor

- A. CONSULTANT acknowledges that it is an independent contractor and that it is solely responsible to and for its employees, agents, subcontractors or representatives. The COUNTY shall not be responsible for any payment, insurance or incurred liability to and for CONSULTANT's employees, agents, subcontractors or representatives.

- B. CONSULTANT is solely responsible for and shall have control over the means, methods, techniques, sequences and procedures of performing the work, subject to the plans and specifications under the SOW and shall be solely responsible for the errors and omissions of its employees, agents, subcontractors and representatives.
- C. CONSULTANT shall indemnify and hold the COUNTY free and harmless from any claims or suit arising in regard to said CONSULTANT's employees, agents, subcontractors or representatives.

XXI. Non-solicitation of Employees

CONSULTANT shall not solicit for employment or hire any employee of the COUNTY involved in the performance of the Services for one year thereafter.

XXII. Indemnification

To the fullest extent permitted by law and only to the extent caused by the negligence of CONSULTANT, CONSULTANT agrees to indemnify, and hold harmless the COUNTY and its agents, officers and employees from and against any and all claims, demands, suits, liabilities, injuries (personal or bodily), property damage, causes of action, losses, costs, expenses, damages, penalties, including, without limitation, reasonable defense costs, and reasonable legal fees, arising or resulting from, or occasioned by or in connection with (i) any bodily injury or property damage resulting or arising from any act or omission to act (whether negligent, willful, wrongful, or otherwise) by CONSULTANT, its employees, agents, subcontractors, representatives or anyone for whose acts CONSULTANT may be liable; (ii) failure by CONSULTANT, its employees, agents, subcontractors or representatives to comply with any Laws applicable to the performance of the Services; (iii) any breach of this Contract, including, without limitation, any representation or warranty provided by CONSULTANT herein; (iv) any employment actions of any nature or kind including but not limited to, workers compensation, or labor action brought by CONSULTANT's employees; or (v) any identity breach or infringement of any copyright, trademark, patent, or other intellectual property right, or violation of data privacy rights.

XXIII. Limitation of Liability

- A. In no event shall either Party be liable to the other Party or any person/entity for any indirect, incidental, consequential, special, or exemplary damages or lost profits arising from the obligations under this Contract.
- B. Notwithstanding anything else under this Contract, the COUNTY's total liability to CONSULTANT under this Contract (including all the annexes and documents incorporated herein) shall under no circumstances exceed, in the aggregate, the fees actually paid by the

COUNTY to CONSULTANT for the Services under this Contract.

XXIV. Failure to Follow Recommendations

The COUNTY agrees that it would be unfair to hold CONSULTANT liable for problems that may occur if the CONSULTANT's recommendations are not followed.

XXV. Breach of Contract

- A. CONSULTANT shall be deemed to have breached this Contract if any of the following occurs:
1. Failure to provide, in full or in part, the Services and/or any deliverables under this Contract;
 2. Failure to maintain the records and/or submit any report required in this Contract;
 3. Assignment of this Contract or any part hereof without prior written authorization by the COUNTY;
 4. Failure to perform, in full or in part, any of the conditions in this Contract;
 5. Failure to adhere to any county, state, or federal rules and regulations governing this Contract.
- B. If CONSULTANT or any of its subcontractor fails to perform or comply with any of the provisions of this Contract, including the Purchase Orders issued in accordance hereof, the COUNTY may consider such failure or non-compliance a breach of this Contract and reserves the right to terminate the Contract at any time, in full or in part, in the sole judgment and discretion of Blount County's Purchasing Agent. The COUNTY may go after the performance bond (if any) of the CONSULTANT in case of breach as above discussed. The COUNTY expressly retains all its rights and remedies provided by law in case of such breach. No action by the COUNTY shall constitute a waiver of any such rights or remedies.
- C. If the Contract is so terminated, the COUNTY may purchase, upon such terms and in such manner as Blount County's Purchasing Agent may deem appropriate, services similar to those so terminated and CONSULTANT shall be liable for excess cost occasioned thereby. In the event the Contract is terminated by the COUNTY for due cause, CONSULTANT may be barred from bidding on COUNTY contracts for a period of twelve (12) months.

XXVI. Termination

A. Termination for Cause

1. The COUNTY may, at any time, terminate this Contract upon written notice to CONSULTANT in case of CONSULTANT's breach of this Contract as written in above Section "Breach of Contract" and CONSULTANT has failed to cure the breach within a

reasonable period allowed by the COUNTY. The termination due to breach under this Section shall take effect immediately upon receipt of the written notice from the COUNTY.

2. If this Contract is so terminated due to CONSULTANT's breach as above-mentioned, the COUNTY may purchase, upon such terms and in such manner as Blount County's Purchasing Agent may deem appropriate, services similar to those so terminated and CONSULTANT shall be liable for the excess cost occasioned thereby. Further, CONSULTANT may be barred from bidding on COUNTY contracts for a period of twelve (12) months.
3. The COUNTY may terminate this Contract if CONSULTANT's performance of Services is interrupted by Force Majeure and such performance does not resume within thirty (30) days from such interruption. The termination due to Force Majeure under this Section shall take effect immediately upon receipt of the written notice from the COUNTY.
4. In the event any voluntary or involuntary proceedings by or against CONSULTANT in bankruptcy or insolvency, or for the appointment of a receiver, trustee or an assignee for the benefit of creditors of the property of CONSULTANT, the COUNTY may terminate this Contract or affirm this Contract and hold the CONSULTANT responsible for damages. The termination due to voluntary or involuntary proceedings by or against CONSULTANT under this Section shall take effect immediately upon receipt of the written notice from the COUNTY.

B. Termination for Convenience

1. The COUNTY may terminate for convenience, in full or in part, this Contract by giving the CONSULTANT a thirty (30) day prior written notice. The COUNTY shall not be liable for the payment of any penalty or incur any further obligation to CONSULTANT following such termination.
2. Following any termination for convenience, CONSULTANT shall be entitled to compensation for Services completed upon submission of required deliverables, invoices and proof of claim for Services provided under this Contract up to and including the effective date of termination. The COUNTY shall have the right to receive Services from CONSULTANT through the effective date of the notice of termination. The COUNTY may, at its election, procure such Services from other CONSULTANT.

- C. In no event shall the COUNTY's exercise of its right to terminate this Contract relieve the CONSULTANT of any liability to the COUNTY for any damages or claims.

XXVII. Force Majeure

- A. Neither Party shall be responsible for any loss if the fulfillment of the terms of this Contract is delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or any other acts which could not have been prevented by the exercise of due diligence (“Force Majeure”), except to the extent that the non-performing Party is at fault in failing to prevent or cause the delay or default. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure event, and only for as long as the Force Majeure event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay.
- B. CONSULTANT shall promptly notify the COUNTY of any delay caused by Force Majeure and shall describe in reasonable detail the nature of the Force Majeure.
- C. CONSULTANT shall not increase its charges for the Services as a result of Force Majeure.

XXVIII. Assignment

- A. Neither CONSULTANT nor any key person of CONSULTANT shall delegate to others the performance of the Services that CONSULTANT or any of its key person is required to perform under this Contract without first obtaining the COUNTY’s written consent. Further, CONSULTANT shall not, without obtaining the COUNTY’s prior written consent, re-assign or transfer any key person to other duties or positions so that the key person is no longer available to provide the COUNTY with that key person’s expertise, experience, judgment, and personal attention. If CONSULTANT requests the COUNTY to approve a re-assignment or transfer of a key person, the COUNTY shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the key person. Any individual that the COUNTY eventually approves as a replacement for a key person is deemed a key person under this Contract.
- B. Absent the prior written consent of the COUNTY, the assignment by CONSULTANT of this Contract or any of the rights and obligations arising therefrom is strictly prohibited and shall be ground for declaring breach by CONSULTANT of this Contract. In such event, the COUNTY shall have recourse against CONSULTANT’s security or performance bond (if any) and/or such other remedies as may be available under this Contract or applicable laws.
- C. Notwithstanding any use of the approved assignees or subcontractors, CONSULTANT shall remain primarily responsible to the COUNTY for compliance with all the terms and conditions of the Contract.

XXIX. Conflict of Interest

- A. By entering into this Contract, CONSULTANT covenants that it has no public or private interest, nor shall acquire directly or indirectly any interest, which would conflict in any manner with the performance of its contractual obligations under this Contract.
- B. CONSULTANT warrants that no part of the contract fee under this Contract shall be paid directly or indirectly to any officer or employee of the COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee or subcontractor or consultant to CONSULTANT in connection with any work contemplated or performed relative to this Contract.

XXX. No Discrimination

To the extent applicable, the CONSULTANT and its subcontractor shall abide by the requirements of 41 CFR §§60-1.4(a), 60-300.5(a) and the posting requirement under 29 CFR Part 471, Appendix A to subpart A. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

XXXI. No Third Party Liability

Nothing in this Contract or as a consequence of any of the Services provided gives any rights or benefits to anyone other than the COUNTY and the CONSULTANT. All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of the COUNTY and the CONSULTANT and not for the benefit of any other party. No third party shall have the right of action on the deliverables under this Contract without the CONSULTANT's prior written consent and the third party's agreement to be bound to the same terms and conditions as the COUNTY.

XXXII. Provisions Required by Law Deemed Inserted

In addition to and notwithstanding the above, each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party the Contract will forthwith be physically amended to make such assertion or correction.

XXXIII. Dispute Resolution

In the event of dispute between CONSULTANT and the COUNTY with regard to any matter arising out of or related to this Contract, the Parties will use their best efforts to resolve the dispute amicably. If the dispute cannot be settled amicably, the Parties may resolve the dispute via court litigation.

XXXIV. Remedies

The COUNTY shall have all rights and remedies afforded under the U.C.C. and Tennessee law in contract and in tort, including but not limited to, rejection of goods, rescission, right of set-off, refund, incidental, consequential and compensatory damages and reasonable attorney’s fees.

XXXV. Governing Law and Venue

- A. This Contract (including all annexes), purchase order and other documents emanating from this Contract shall be governed and interpreted pursuant to the laws of the State of Tennessee, without regard to conflict of law principles.
- B. Any and all legal proceedings or litigation arising out of this Contract (including all annexes), purchase order and other documents emanating therefrom, shall have venue lie in Blount County, Tennessee, and CONSULTANT agrees to the jurisdiction of Blount County, Tennessee courts.

XXXVI. Notifications

All notices provided for under this Contract shall be in writing, duly signed by the Party giving such notice, and shall be emailed or delivered, express or mailed by first class mail, as follows, or to such other addresses as a Party herein may hereafter designate in writing:

BLOUNT COUNTY GOVERNMENT	S&ME, INC.
Attn: Katie B. Kerr Purchasing Agent	Attn: Sarah Sinatra Gould, AICP Project Manager
Address: 385 Court Street Maryville, TN 37804-5906	Address: 3201 Spring Forest Road, Raleigh, NC 27616

Phone: (865) 273-5745	Phone: O: 919.872.2660 M: 954.205.3272
Email: kbranham@blounttn.org	Email: Sgould@smeinc.com

XXXVII. Declarative Statements

Statements or words such as must, shall or will are declarative statements and CONSULTANT must comply with the condition. Failure to comply with any such condition may be considered as breach of this Contract.

XXXVIII. Public Information

CONSULTANT understands that any material supplied to the COUNTY may be subject to public disclosure under the Tennessee Open Records Act, T.C.A. § 10-7-501 et seq.

XXXIX. Non-waiver of Rights

Failure by any Party to this Contract to require the strict performance of any of the terms, conditions or specifications under this Contract shall not be construed as a waiver of any terms, conditions or specifications nor be construed as a waiver of any right or claim arising from such terms, conditions or specifications, unless the Parties agree to in writing.

XL. Amendment

This Contract or any of its annexes may be modified only in writing signed by the authorized signatories of the Parties herein.

XLI. Entire Contract

This Contract and annexes herein constitutes the entire agreement of the Parties in regard to the Services to be performed by CONSULTANT for the COUNTY. This Contract supersedes any and all prior understandings, representations, negotiations, and agreement between the Parties, whether written or oral.

XLII. Severability

Contract No. C20230031

Comprehensive Plan for Sustainable Growth Management and Development Consulting Services Contract

If any provision of this Contract is declared illegal, void or unenforceable, the remaining provisions shall not be affected but shall remain in force and in effect.

XLIII. Execution in Counterparts

This Contract may be executed in one or more counterparts (including by electronic transmission), each of which shall be deemed to constitute an original, but all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties herein signed this Contract on the date written below.

S&ME, INC.

BLOUNT COUNTY GOVERNMENT

By: _____

By: ED MITCHELL
Blount County Mayor


Date: _____

Date: _____

By: KATIE B. KERR
Purchasing Agent

Date: _____

Approved as to form:


By: CRAIG L. GARRETT
Attorney for Blount County Government

Date: 10/13/22

Annex A STATEMENT OF WORK

This Annex A, named "Statement of Work (SOW)", defines the works ("Services") to be performed by S&ME, INC. ("CONSULTANT") for BLOUNT COUNTY GOVERNMENT ("COUNTY").

I. The Project

The Services under this SOW, being performed under Contract Number C20230031 named as "*Comprehensive Plan for Sustainable Growth Management and Development Consulting Services Contract*" (hereinafter referred to as the "Contract"), are for the purposes of providing consulting services to the COUNTY in relation to the creation of a comprehensive plan, which plan shall serve as the guiding document for sustainable growth management and development for Blount County's next twenty years (hereinafter referred to as the "Project").

The Comprehensive Plan will serve as the guiding document for sustainable growth management and development for the County's next 20 years. It should include the entire county and replace the Comprehensive Plan that was developed over 20 years ago. The objective is to manage and guide the residential, industrial, commercial and public development and the infrastructure construction that will determine the nature of the county, and should address a variety of issues in a broad and long-term manner to assist in determining needs for sustainable growth management

This SOW incorporates by reference the terms and conditions, specifications, and other documents under Request for Proposal (RFP) No. 2023-0031 (entitled "Comprehensive Plan for Growth Management and Development for Blount County, TN"). In case of any conflict between this SOW and the Contract, the Contract shall prevail.

II. Services and Fees

- A. As may be ordered by the COUNTY via Purchase Order, CONSULTANT shall provide to the COUNTY the following Services:

Task 1 – Community Inventory and Analysis

CONSULTANT recognizes that in order to adequately plan for the future, there must be a detailed and accurate inventory of existing conditions, local history, infrastructure and populations. Through a variety of analysis tools, CONSULTANT shall capture a snapshot of the community trends into the next twenty years. CONSULTANT shall accomplish this Task 1 through:

1. Current and Future Land Use Mapping
2. Mapping of existing and proposed transportation infrastructure
3. Population Projections based on regional growth projections and census data
4. Evaluation of school impacts. This will rely on available data provided by the School Board describing school capacity, as well as information from the COUNTY relating to number of units approved per project.
5. Coordination and collaboration with County Departments and other County Consultants regarding ongoing planning and/or infrastructure projects as needed as well as a listing of projects identified in the Capital Improvements Program that will affect level of service within components of the Comprehensive Plan.

Task 2 – Land Use Plan Audit

CONSULTANT is a research-oriented planning team, with skills in analysis and data collection. CONSULTANT shall assess and summarize all existing plans and projects affecting Blount County in order to properly inform CONSULTANT's approach and recommendations. CONSULTANT shall accomplish this Task 2 through:

1. Matrix of existing policies
2. Summarizing all plans with a literature review

Task 3 – Public Engagement and Education

Public engagement is essential to the success of a Comprehensive Plan. Public engagement is not simply a task to be crossed off a list; it is an ongoing process that continually informs and shapes the development of a plan. CONSULTANT is skilled in public engagement strategies and shall ensure that community members are included and valued during the creation of the County's Comprehensive Plan Update. CONSULTANT shall accomplish this Task 3 through:

1. **Two (2) Steering Committee Engagement Roundtables.** The first meeting will occur within the first two months after execution of this Contract. It will include 7-12 members of the public and to be held at the Blount County Court House. The purpose of the meeting will be to gain input from a varied group of stakeholders, with the goal of guiding the CONSULTANT's Team towards an effective public engagement program and to set the overall tone of the Project.
2. **Blount County specialized Website on Social Point with an interactive map and survey.** The website will house existing documentation for reference, a schedule, links to meetings, minutes or videos of meetings where applicable, summary reports, and activities to gain feedback throughout the process. It will also offer opportunities to provide comments and leave input. CONSULTANT shall work with the COUNTY to create a branding, logo and slogan for the Project, which shall be part of the materials produced and imagery on Social Pinpoint.
3. **One (1) in-person public open-house workshop.** This will include a virtual option as well to gain the most attendance possible. This meeting will occur at the Blount County Court House and will introduce the project, encourage discussion and provide information on how to participate throughout the Project.

4. **Two (2) in-person public open houses at different areas in the County.** These open houses will be an informal format where the public can stop in at their convenience to visit different stations the S&ME Team will setup for the purpose of gaining input. This will also offer the public an opportunity to chat with the team on specific concerns or interests they have for the plan.

Task 4 – Plan Development and Content

CONSULTANT’s placemaking team has years of experience drafting, reviewing and editing Comprehensive Plans. CONSULTANT’s commitment to technical excellence is insured by its two-reviewer process, in which every deliverable is reviewed by at least two senior reviewers before it is submitted to the COUNTY. CONSULTANT shall draft, edit and submit a successful Comprehensive Plan through:

1. A collaborative, team-centered approach to drafting a plan
2. Multi-stage editing and review process
3. Final review by Two senior reviewers
4. Three (3) rounds of revisions.

Task 5 – Public Hearing and Plan Adoption

CONSULTANT shall create professional, streamlined presentation content that will summarize and illustrate the CONSULTANT’s recommendations. CONSULTANT is skilled in public speaking and believes that proper communication of the plan is just as important as the contents in the plan. CONSULTANT shall achieve a successful presentation of Blount County’s updated Comprehensive Plan by:

1. Ensuring graphics and design in the plan are consistent with the presentation for a professional and polished appearance
2. Designing engaging and interactive presentations through handouts and discussion facilitation.
3. Two (2) presentations to the Planning Commission and two (2) presentations to County Commission.

B. **Deliverables.** CONSULTANT shall work with representatives of the COUNTY to develop the following work products:

1. **An updated Comprehensive Plan.** This includes updates to all elements. The plan will analyze population projections, ERSI data and existing conditions. An update of the infrastructure and transportation portions of the plan will include an evaluation of Capital Improvements as well as consideration of the Thoroughfare Plan. The Comprehensive Plan will take into consideration applicable County plans and include projects outlined within the planning horizon for consistency.
2. **Implementation Schedule.** This will include strategies and timing for implementation of the programs identified in the plan update.
3. A Social Pinpoint webpage for the Project to be housed as a link from the County’s website.

4. A GIS Land Use Map

Said deliverables shall be delivered under the following conditions:

1. Maps and associated data to be provided to the COUNTY shall be in ArcGIS format
2. All text and report files shall be in editable MS Word and PDF formats
3. All final reports shall be presented in digital format for archiving and reproduction
4. 10 bound color copies of the final comprehensive plan
5. 20 executive summaries of the comprehensive plan.

C. CONSULTANT understands and agrees that the COUNTY has executed or may have executed contract/s with other party/ies for services the same as or similar to those described under this Contract. This Contract does not grant CONSULTANT any exclusive right to perform the Services hereunder. The COUNTY does not guarantee to engage CONSULTANT for any minimum scope of work.

D. Unless otherwise stated in writing, the COUNTY assumes sole responsibility for determining whether the quantity and the nature of the services provided by CONSULTANT under this Contract are adequate and sufficient for the COUNTY's intended purpose. The CONSULTANT shall have no duty or obligation to any third party except as specifically set forth in this Contract.

E. Assumptions and Limitations.

1. Services herein are for general planning analysis relating to preparation of the Comprehensive Plan. Except for the deliverables mentioned above, the following services are excluded from this proposal:
 - a. Additional mapping or revisions
 - b. Additional meetings, workshops or public engagement sessions.
2. CONSULTANT shall not supervise, direct or have control over the COUNTY's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the COUNTY's contractor and/or agents. These rights and responsibilities are solely those of the contractor or agent in accordance with its own agreement with the COUNTY. Only the COUNTY has the right to reject or stop work of its contractor or agents. CONSULTANT's presence on site does not in any way guarantee the completion, quality or performance of the work by any other party retained by the COUNTY. CONSULTANT does not guarantee the performance of any contractor or agent of the COUNTY and shall not be responsible for such party's failure to perform its work in accordance with any applicable documents, including, but not limited to, plans and specifications or any applicable laws, codes, rules or regulations.
3. Any evaluations of the COUNTY's budget for constructions related to the Project, and any preliminary or updated estimates of the cost of the construction works prepared by CONSULTANT represent CONSULTANT's judgment as a design professional familiar with

the construction industry. It is recognized, however, that neither the CONSULTANT nor the COUNTY has control over the cost of the labor, materials, or equipment, over the contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, CONSULTANT does not warrant or represent that bids or negotiated prices for the construction will not vary from COUNTY's budget for said construction project, or from any evaluation made by the CONSULTANT on the estimated cost of the construction work by the contractor.

III. Fees

A. The COUNTY shall pay the CONSULTANT the following fees for the Services:

Task	Fee
Task 1: Community Inventory and Analysis	\$20,400
Task 2: Land Use Plan Audit	\$15,540
Task 3: Public Engagement and Education	\$27,020
Task 4: Plan Development and Content	\$34,620
Task 5: Public Hearing and Plan Adoption	\$13,000
TOTAL	\$110,580

The above fees exclude reimbursable expenses incurred for the Project, including mileage, printing, plotting, photocopies, reproduction, postage, long distance telephone, facsimile, express mail and/or courier services.

Application, capacity and impact fees associated with application filings shall be the COUNTY's responsibility or reimbursed to the CONSULTANT if the latter paid for said fees.

B. Should conditions be encountered such that additional services appear to be in the interest of the Project, CONSULTANT shall contact the COUNTY with recommendations prior to proceeding with any services beyond the scope of this Contract. CONSULTANT shall not exceed the above-mentioned fees without written authorization from the COUNTY.

IV. Invoicing and Payment

CONSULTANT shall invoice the COUNTY monthly for the works performed and allowed expenses incurred for the Project. In addition, CONSULTANT reserves the right to suspend the performance of all services in any case where undisputed invoices remain unpaid more than sixty (60) days from the invoice date.

In addition to the provisions in this Annex A, the provisions in Clause X of the Contract shall likewise apply.

V. County's Obligations

The COUNTY has the following obligations:

1. The COUNTY shall provide to CONSULTANT studies and plans for review, direction on goals and priorities, determine which stakeholders are to be included and provide locations for stakeholders' meetings.
2. The COUNTY warrants that all information provided to CONSULTANT regarding the Project and Project location are complete and accurate to the best of the COUNTY's knowledge.
3. The COUNTY agrees to furnish (or obtain from the owner should the COUNTY not be the owner) the CONSULTANT, its agents, employees and subcontractors a right-of-entry and any authorizations needed for CONSULTANT to enter onto the Project site to perform the Services included in this Contract.
4. The COUNTY recognizes that the performance of the Services included in this Agreement may cause alteration or damage to the Site. The COUNTY acknowledges that some site disturbance is inherent in the work for which CONSULTANT will not be responsible, unless the CONSULTANT acts in violation of or in excess of the COUNTY's instruction or for acts not covered by the Services under this Contract. Should the COUNTY not be the owner of the property, then the COUNTY agrees to notify the owner of the aforementioned possibility of unavoidable alteration and damage and the COUNTY shall arrange for the repair of any alteration and damage.
5. The COUNTY agrees to disclose the identity of all utilities serving the Project Site, the presence and accurate location of hidden or obscured man-made objects known to the COUNTY that may be in CONSULTANT's work area and the nature and location of any known or suspected hazardous materials that may exist on the property.
6. The COUNTY shall furnish, at the COUNTY's expense, all information, requirements, reports, data, surveys and instructions required by this Contract. The CONSULTANT may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.
7. The COUNTY shall provide prompt written notice to CONSULTANT if the COUNTY becomes aware of any fault or problem in the Project, including any errors or omissions in CONSULTANT's works.
8. The COUNTY is responsible for reporting any release of hazardous substances to appropriate government agencies as required by law. The COUNTY acknowledges that CONSULTANT also may have reporting obligations under controlling laws and regulations.

The COUNTY waives any claim against CONSULTANT and will indemnify and hold CONSULTANT harmless from any claim, injury or loss arising from the discovery of unforeseen hazardous substances

VI. Insurance

At no cost to the COUNTY, CONSULTANT shall carry insurance coverage as specifically required in the RFP No. 2023-0031.

In addition to the provisions in this Annex A, the provisions in Clause XVI of the Contract shall likewise apply.

VII. Safety

CONSULTANT has no authority and no responsibility for general job safety and for the safety of persons who are not employed by CONSULTANT. Should the COUNTY or third parties be conducting activities on the Site, then each shall have responsibility for their own safety and compliance with applicable safety requirements.

VIII. Samples

Samples are consumed in testing or disposed of upon completion of tests (unless otherwise agreed by the Parties).

(end of Annex A)