

**RESOLUTION**

**WHEREAS**, the Middle Point Landfill is projected to close in eight (8) years; and

**WHEREAS**, the City of Murfreesboro and Rutherford County (the entities) see the need to plan for future garbage collection and disposal to keep pace with the rapid population growth in the county; and

**WHEREAS**, the entities have entered into a Memorandum of Understanding relative to employing a firm to provide a feasibility study and develop a solid waste strategic plan for future waste disposal; and

**WHEREAS**, after conducting interviews and reviewing proposals the entities have selected the firm of Gershman, Brickner & Bratton, Inc. to provide said feasibility study at a cost of Two Hundred Fifty Thousand One Hundred Dollars (\$250,100.00), with one-half to be paid by the City of Murfreesboro in accordance with the previously approved Memorandum of Understanding.

**THEREFORE BE IT RESOLVED** by the Rutherford County Board of Commissioners that the County Mayor and all other required officials of Rutherford County, Tennessee be, and are hereby authorized to enter into an agreement with Gershman, Brickner & Bratton, Inc., a copy of the same being attached hereto as "Exhibit 1" and incorporated herein by reference as if set forth herein at length verbatim, to provide a feasibility study at a cost of Two Hundred Fifty Thousand One Hundred Dollars (\$250,100.00), with one-half to be paid by the City of Murfreesboro in accordance with the previously approved Memorandum of Understanding; and additionally, that the SOLID WASTE FUND be amended as follows to appropriate funds for the feasibility study:

Postclosure Care Costs:

Increase Revenue:	116-48140	Contracted Services	\$125,050
Decrease:	116-34730	Assigned Fund Bal.	\$125,050
Increase Expend.:	116-55770-308	Consultants	\$250,100

**RESOLVED** this 11<sup>th</sup> day of August, 2016.

RUTHERFORD COUNTY, TN

BY: \_\_\_\_\_  
ERNEST G. BURGESS, Chairman

**ATTEST:**

\_\_\_\_\_  
LISA CROWELL, County Clerk

## **Agreement for Solid Waste Disposal Feasibility Study**

This Agreement is entered into and effective as of the \_\_\_\_ day of August 2016, by and among **Rutherford County, Tennessee**, a political subdivision of the State of Tennessee, the **City of Murfreesboro**, a municipal corporation of the State of Tennessee ("Entities"), and **Gershman, Brickner & Bratton, Inc.**, a Maryland corporation ("Consultant").

This Agreement consists of the following documents:

- This document
- Request for Competitive Sealed Proposal (the "RCSP"), issued Tuesday, March 29, 2016
- Consultant's Proposal, dated May 4, 2016 ("Consultant's Proposal")
- Consultant's Price Proposal dated May 4, 2016 (the "Price Proposal"), and,
- Any properly executed amendments to this Agreement.
- Interlocal Agreement dated June 16, 2016

In the event of conflicting provisions, all documents will be construed according to the following priorities:

- First, any properly executed amendment or change order to this Agreement (most recent amendment or change order given first priority);
- Second, this Agreement;
- Third, the RCSP; and
- Lastly, Consultant's Proposal.

### **1. Duties and Responsibilities of Consultant.**

- 1.1 Consultant is engaged to draft solid waste strategic plan to the City and the County based on the process outlined on pages 19-24 of Consultant's May 4, 2016 proposal (the "Strategic Plan").
- 1.2 In undertaking the work set forth herein, Consultant must to comply with all applicable federal, state, and local laws and regulations, including acquiring and maintaining in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. Consultant is solely response to any and all taxes imposed upon Consultant and acknowledges it cannot claim exemption from taxes by virtue of any Entities exemption from taxation.
- 1.3 The Entities acknowledge and approve of the involvement of the firms Cooley Public Strategies, LLC and Triad Environmental Consultants as approved subcontractors to the Consultant on the performance of work under this Agreement.

### **2. Term.**

- 2.1 The term of this Agreement commences on the Effective Date and expires on July 31, 2017 unless extended by mutual agreement of Consultant and one or more of the Entities or unless earlier terminated as set forth herein.
- 2.2 Termination. Consultant's services may be terminated in whole or in part:
  - a. Upon 30-day prior notice, for the convenience of one or both of the Entities, provided that if one of the Entities notifies Consultant of its intent to terminate

under this paragraph, the remaining Entity may elect to continue this Agreement under the same terms and conditions.

- b. For the convenience of Consultant, provided that Consultant notifies the Entities in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination and surrenders all documentation, data, drawings, and work products generated through the termination date.
- c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
- d. Should Consultant fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, Entities have the right to immediately terminate the Agreement. Such termination does not relieve Consultant of any liability to Entities for damages sustained by virtue of any breach by Consultant.
- e. Should the appropriation for Consultant's work be withdrawn or modified, Entities have the right to terminate the Agreement immediately upon written notice to Consultant.

3. **Compensation; Method of Payment.** Consultant shall submit monthly invoices for services rendered, based upon the percentage of completed tasks, as outlined in the Price Proposal. Entities shall make payments in the amount shown by approved Consultant invoices within thirty (30) days of receiving such invoice.

4. **Work Product.** Except as otherwise provided herein, all data, documents and materials produced by Consultant under this Agreement are the property of Entities, which retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Any Entities property, including but not limited to books, records and equipment that is in Consultant's possession must be maintained in good condition and repair and returned to Entities by Consultant at the end of this Agreement

5. **Insurance.** During the term of this Agreement, Consultant must maintain comprehensive general liability insurance with limits of not less than \$1,000,000, as well as automotive and workers' compensation insurance policies. Consultant will provide to the Entities a standard certificate of insurance this coverage prior to commencement of work and upon renewal or expiration of the policies reflected thereupon.

6. **Indemnification.**

6.1 Consultant must indemnify, defend, and hold harmless Entities, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of Consultant, its officers, employees and/or agents, including its sub or independent Consultants, in connection with the performance of this Agreement, and, Expenses arising from any failure of Consultant, its officers, employees and/or agents,

including its sub Consultants or independent Consultants, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

6.2 Pursuant to Tennessee Attorney General Opinion 93-01, Entities will not indemnify, defend or hold harmless in any fashion Consultant from any claims arising from any failure, regardless of any language in any attachment or other document that Consultant may provide.

6.3 Copyright, Trademark, Service Mark, or Patent Infringement.

a. Consultant, at its own expense, is entitled to and has the duty to defend any suit which may be brought against Entities to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Consultant will indemnify and hold harmless Entities against any award of damages and costs made against Entities. Entities will provide Consultant immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from Entities in order to enable Consultant to do so. Entities reserves the right to participate in the defense of any such action. Consultant has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amount due to effectuate fully the settlement are immediate due and payable and paid by Consultant; (ii) no cost or expense whatsoever accrues to the Entities at any time; and (iii) such settlement or compromise is binding upon Entities only upon approval by both the Rutherford County Commission and the Murfreesboro City Council.

b. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Consultant's obligation to satisfy the final award, Consultant may at its option and expense:

- (1) Procure for Entities the right to continue using the products or services.
- (2) Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to Entities, so that they become non-infringing.
- (3) Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Consultant will not exercise this option until Consultant and Entities have determined that each of the other options are impractical.

c. Consultant has no liability to Entities if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Consultant, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which Entities has any direct or indirect interest by license or otherwise, separate from that granted herein.

7. **Notices.** Notice of assignment of any rights to money due to Consultant under this Agreement must be mailed first class mail or hand delivered to the following:

If to the Rutherford County:

Rutherford County Office of the Mayor  
1 Public Square, Suite 101  
Murfreesboro, Tennessee 37130

If to the City of Murfreesboro:

City Manager  
City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130

If to Consultant:

Lori Scozzafava  
Vice President Operations  
Gershman, Brickner & Bratton, Inc  
8550 Arlington Blvd, Suite 304  
Fairfax, VA 22031-4620

8. **Maintenance of Records.** Consultant must maintain documentation for all charges against Entities. The books, records, and documents of Consultant, insofar as they relate to work performed or money received under the Agreement, must be maintained for a period of three full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by Entities or its duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.
9. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
10. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.
11. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
12. **Employment.** Consultant may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
13. **Non-Discrimination.** It is the policy of the Entities not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or

state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Consultant certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in Entities' contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with Entities or in the employment practices of Entities' Consultants. Accordingly, all proposers entering into contracts with Entities may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

14. **Gratuities and Kickbacks.** It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a sub Consultant under a contract to the prime Consultant or higher tier sub Consultant or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a Consultant or sub Consultant under Entities contracts.
15. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Consultant under this Agreement, neither this Agreement nor any of the rights and obligations of Consultant hereunder may assigned or transferred in whole or in part without the prior written consent of Entities. Any such assignment or transfer do not release Consultant from its obligations hereunder.
16. **Integration.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and govern the respective duties and obligations of the parties.
17. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
18. **Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless choice of law doctrine or provision in any attachment or other document that Consultant may

provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.

- 19. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.
- 20. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, the party/parties that do not prevail will pay all expenses of such action including prevailing party's attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
- 21. **Effective Date.** This Agreement is not binding upon the parties until signed by each of the Consultant and authorized representatives of the Entities and is thereafter effective as of the date set forth above.

**Rutherford County, Tennessee**

**Gershman, Brickner & Bratton, Inc.**

By: \_\_\_\_\_  
Ernest G. Burgess, County Mayor

\_\_\_\_\_  
By: Lori Scozzafava  
Its: Vice-President Operations

Approved as to form:

\_\_\_\_\_  
County Attorney

**City of Murfreesboro, Tennessee**

By: \_\_\_\_\_  
Shane McFarland, Mayor

Approved as to form:

\_\_\_\_\_  
City Attorney