



Professional Services Agreement

This Professional Services Agreement ("Agreement") is made and entered into on this [_____] day of [____], 2024 (the "Effective Date") by and between _____, AMERIPRISE FINANCIAL SERVICES, LLC (SMALL & ASSOCIATES FINANCIAL) Company with offices located at 36 Rahling Circle, Suite 2, Little Rock Arkansas 72223, and Group Five West, Inc. ("Consultant") with offices located at 810 W 2nd Street, Little Rock, AR 72201. Company and Consultant are sometimes collectively referred to herein as the "Parties" and individually as a "Party".

1. Services.

- (a) Consultant agrees to provide marketing, advertising, and professional services as may be agreed upon by the Parties from time to time (the "Services"). The Services shall be performed by Consultant on a time and materials basis. Services shall be set forth in a Statement of Work ("SOW"), as may be agreed upon by the Parties.

2. Conditions for Delivery of Services.

3. **SOWs.** Prior to the performance of any Services, an SOW will be prepared which will set forth, among other provisions, (i) a detailed description of the Services to be performed; (ii) a delivery or performance schedule for the Services, and any deliverables to be provided to the Company; (iii) the respective roles and responsibilities of the Parties; and (iv) the fees to be paid to Consultant for the Services. Upon execution of an SOW by the Parties, each SOW shall be incorporated into and made part of this Agreement. To the extent there are any conflicts or inconsistencies between this Agreement and any SOW, the terms of this Agreement shall govern and control to the extent of such conflict or inconsistency. SOW **AMERIPRISE FINANCIAL SERVICES (SMALL & ASSOCIATES FINANCIAL) 24-MONTH MARKETING AGREEMENT (Exhibit A)** will be executed simultaneously with this Agreement.

- (a) **Additional Services.** During the Term of this Agreement, Company may wish to assign additional Services to the Consultant beyond the initial SOW ("Additional Services"). Additional Services shall be agreed upon by both Parties and an additional SOW shall be executed before work on the Additional Services begins. Nothing in this Agreement shall be deemed to require Consultant to undertake any act or perform any services which in its good-faith judgment would be misleading, false, libelous, unlawful, in breach of a pre-existing contract, or otherwise prejudicial to Company's or Consultant's interests.
- (b) **Modification of Services; Change Orders.** Any changes or modifications to the Services must be made pursuant to an amendment to an SOW that has been signed by both Parties. Neither Party shall have any obligation with respect to any changes to the



Services until such time that an appropriate amendment to the applicable SOW has been executed and delivered by both Parties.

- (c) **Access; Compliance with Company Rules.** Company agrees to provide Consultant commercially reasonable access to its premises, equipment, computer systems, books and records, etc. as necessary for Consultant to perform the Services.

4. Fees; Invoices and Payment.

- (a) **Fees.** As full and complete compensation for the Services, Company shall pay Consultant at a set fee as may be agreed upon by the Parties and set forth in an SOW as provided for in Section 2. above (the "Fees"). The Fees for the Services do not include any excise, sales, use, value added or other taxes, tariffs or duties that may be applicable to the Services. Any Additional Services and Fees will be detailed in a new SOW executed by both Parties.
 - (i) **Commissions.** Consultant shall receive a commission of fifteen (20%) percent of the gross charges made by the advertising media, including, but not limited to, print, electronic or outdoor, for time or space used by Company. Additionally, Consultant shall receive a commission of fifteen (20%) of the charges made by third parties with whom Consultant has contracted for products and services which are to be used to implement the Services.
 - (ii) **Marketing and Advertising Buyouts.** Any and all marketing and advertising buyouts, including, but not limited to, print, radio, digital, and television advertising space are specifically excluded from the Fees and shall be paid by Company to Consultant in full.
- (b) **Expenses.** Company shall pay for reasonable and preauthorized out of pocket and pass-through expenses incurred in connection with the performance of the Services. Such expenses must either be expressly set forth in the applicable SOW or approved in advance and in writing by Company. Company shall pay Consultant for its direct costs of mailing, packaging, shipping, taxes, and duties incurred by Consultant in connection with the performance of this Agreement.
- (c) **Invoices and Payment.** For all Services, Fees, expenses and other reimbursable amounts, unless otherwise provided for in an SOW, Consultant shall prepare and submit invoices to Company on a monthly basis. Payment from the Company shall be due thirty (30) days after receipt of the Consultant's invoice. Unless otherwise directed by Company, Consultant shall submit invoices to Company at: 36 Rahling Circle, Suite 2, Little Rock Arkansas 72223



- (d) **Warranty.** The Services to be performed hereunder are in the nature of professional services and consulting. Consultant does not warrant the results or achievements of the Services provided or the resulting work product or deliverables.
- (e) **LIMITATION OF WARRANTY: THE WARRANTY SET FORTH IN THIS SECTION 4 IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SERVICES, WORK PRODUCT OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT, OR AS TO THE RESULTS WHICH MAY BE OBTAINED THEREFROM. CONSULTANT DISCLAIMS ANY AND ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY'S EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY IS REPERFORMANCE OF THE SERVICES.**

5. Confidentiality.

- (a) **Confidential Information.** The Parties acknowledge that by reason of their relationship hereunder, each Party may disclose or provide access to the other certain Confidential Information. "Confidential Information" shall mean (i) information concerning a Party's products, business and operations including, but not limited to, information relating to business plans, financial records, customers, suppliers, vendors, products, product samples, costs, sources, strategies, inventions, procedures, sales aids or literature, technical advice or knowledge, contractual agreements, pricing, product specifications, trade secrets, procedures, distribution methods, inventories, marketing strategies and interests, algorithms, data, designs, drawings, work sheets, blueprints, concepts, samples, inventions, manufacturing processes, computer programs and systems and know-how or other intellectual property, of a Party and its affiliates that may be at any time furnished, communicated or delivered to a Party, whether in oral, tangible, electronic or other form; (ii) the terms of any agreement, including this Agreement, and the discussions, negotiations and proposals related to any agreement; (iii) information acquired during any tours of or while present at a Party's facilities; and (iv) all other non-public information provided by a Party hereunder. All Confidential Information shall remain the exclusive property of the disclosing Party.
- (b) **Use of Confidential Information; Standard of Care.** The receiving Party shall maintain the disclosing Party's Confidential Information in strict confidence and disclose the Confidential Information only to its employees, subcontractors and representatives who (i) have a need to know such Confidential Information in order to fulfill the business affairs and transactions between the Parties contemplated by this Agreement; (ii) have been informed of the confidential nature of the Confidential information furnished by the disclosing Party and the receiving Party's obligations with respect thereto; and (iii) are under confidentiality obligations no less restrictive as this Agreement. The receiving Party shall at all times remain responsible for breaches of this Agreement arising from



the acts of its employees, subcontractors and representatives. Receiving Party shall use the same degree of care as it uses with respect to its own similar information, but no less than a reasonable degree of care, to protect the Confidential Information from any unauthorized use, disclosure, dissemination, or publication. Each Party shall only use the Confidential Information in furtherance of its performance of its obligations under this Agreement and agrees not to use the other Party's Confidential Information for any other purpose or for the benefit of any third party.

- (c) **Exceptions; Required Disclosures.** Confidential Information does not include information that: (i) was lawfully in the receiving Party's possession before receipt from the disclosing Party, as established by competent evidence; (ii) at or after the time of disclosure, becomes generally available to the public other than through any act or omission of the receiving Party; (iii) is received by the receiving Party from a third party free to make such disclosure without, to the best of the receiving Party's knowledge, breach of any legal or contractual obligation; (iv) is independently developed by the receiving Party without use of the Confidential Information, as demonstrated by competent evidence; or (v) is disclosed by receiving Party with the disclosing Party's prior written approval. If the receiving Party is confronted with legal action to disclose Confidential Information received under this Agreement, it shall, unless prohibited by applicable law, provide prompt written notice to the disclosing Party to allow the disclosing Party an opportunity to seek a protective order or other relief it deems appropriate, and the receiving Party shall reasonably assist the disclosing Party in such efforts. If disclosure is nonetheless required, the receiving Party shall limit its disclosure to only that portion of the Confidential Information which it is advised by its legal counsel must be disclosed.
- (d) **Unauthorized Use or Disclosure of Confidential Information; Equitable Relief.** In the event the receiving Party discovers that any Confidential Information has been used, disseminated or accessed in violation of this Agreement, it will immediately notify the disclosing Party; take all commercially reasonable actions available to minimize the impact of the use, dissemination or publication; and take any and all necessary steps to prevent any further breach of this Agreement. The receiving Party agrees and acknowledges that any breach or threatened breach regarding the treatment of the Confidential Information may result in irreparable harm to the disclosing Party for which there may be no adequate remedy at law. In such an event the disclosing Party shall be entitled to seek an injunction, without the necessity of posting a bond, to prevent any further breach of this Agreement, in addition to all other remedies available in law or at equity.
- (e) **Return of Confidential Information; Survival.** The receiving Party shall promptly return or, at the disclosing Party's option, certify destruction of all copies of Confidential Information at any time upon request or within thirty (30) days following the expiration or earlier termination of this Agreement. Notwithstanding any expiration or termination of this Agreement, the receiving Party's obligations to protect the Confidential



Information pursuant to this Section will survive for two (2) years after the expiration or earlier termination of this Agreement.

- 6. Intellectual Property.** The copyright in all Services and deliverables created for Company under this Agreement shall belong to the Consultant. All intellectual property rights in all pre-existing works and derivative works of such pre-existing works and other deliverables and developments made, conceived, created, discovered, invented or reduced to practice in the performance of the Services hereunder are and shall remain the sole and absolute property of Consultant, subject to a worldwide, non-exclusive license to Company for its internal use as intended under this Agreement.
- 7. Indemnification.** Each party (the "Indemnifying Party") will indemnify, defend, and hold the other party, its officers, directors, employees, and/or shareholders, harmless from and against any and all damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), judgments, liabilities, fines, penalties, losses, claims, actions, demands, lawsuits, costs, and expenses including, without limitation, reasonable attorney's fees, which arise out of or relate to any material breach of this Agreement by the Indemnifying Party or its employees or agents, or from any acts or omissions of negligence, willful misconduct, or fraud of the Indemnifying Party or its employees or agents, including, but not limited to, third party claims and claims for property damage or personal injury to the other Party's Personnel ("Personnel" defined as such Party's employees, servants and agents, independent contractors and subcontractors). The Indemnifying Party's liability under this Section shall be reduced proportionally to the extent that any act or omission of the other Party or its employees or agents contributed to such liability. The Indemnifying Party's obligations hereunder are subject to being provided with prompt written notice of the event giving rise to an indemnity obligation, providing reasonable cooperation and assistance in the defense or settlement of any claim, and granting the Indemnifying Party control over the defense and settlement of the same.
- 8. Term.** This Agreement will commence as of the Effective Date and shall continue in full force and effect for from January 2025 through December 2026. This Agreement may be extended for terms upon the written mutual agreement of the Parties.
- 9. Termination.**

 - (a) Termination for Breach.** Consultant may terminate this Agreement at any time in the event of a breach by the other Party of a material covenant, commitment or obligation under this Agreement that remains uncured for thirty (30) days following written notice thereof. Such termination shall be effective immediately and automatically upon the expiration of the applicable notice period, without further notice or action by either Party. Termination shall be in addition to any other remedies that may be available to the non-breaching Party.

- (b) **Termination for Bankruptcy, Insolvency or Financial Insecurity.** Either Party may terminate this Agreement immediately at its option upon written notice if the other Party: (i) becomes or is declared insolvent or bankrupt; (ii) is the subject of a voluntary or involuntary bankruptcy or other proceeding related to its liquidation or solvency, which proceeding is not dismissed within ninety (90) calendar days after its filing; (iii) ceases to do business in the normal course; or (iv) makes an assignment for the benefit of creditors. This Agreement shall terminate immediately and automatically upon any determination by a court of competent jurisdiction that either Party is excused or prohibited from performing in full all obligations hereunder, including, without limitation, rejection of this Agreement pursuant to 11 U. S. C. §365.
- (c) **Obligations upon Termination.** Termination of this Agreement for any reason shall not discharge Company's liability for obligations incurred by Consultant hereunder and amounts unpaid by Consultant at the time of such termination. Upon termination, each Party shall return the other Party's Confidential Information and any other materials or property of the other Party that is in its possession at the time of termination.
- (i) **Disposition of Property and Materials.** All plans, preliminary outlines, sketches, copy, and all other property and materials which are produced by Consultant under this Agreement shall be property of the Consultant until payment of Fee is made in full.

10. Non-Solicitation. During the Term of this Agreement and for a period of one (1) year following the termination or expiration of this Agreement, or any SOW, Company shall not, without the written permission of the Agency, directly or indirectly (i) solicit, employ or retain, or have to cause any other person or entity to solicit, employ or retain, any person who is employed by the Consultant or (ii) agree to hire or employ any such person employed by the Consultant.

11. Independent Contractor Status. With respect to any Services provided under this Agreement, Consultant and its employees, personnel, and permitted contractors are independent contractors and not employees of the Company. Any persons provided by Consultant to perform the Services shall receive compensation and all benefits to which they may be entitled from Consultant and are not eligible during such assignment for any benefits provided to employees of Company. The Parties recognize and agree that any person performing Services under this Agreement, whether at Company's location or elsewhere, shall not be considered Company employees for any purpose whatsoever. Consultant will be responsible for any applicable payment of any salary, benefits, incentives, and will make all appropriate tax, social security, Medicare and other withholdings deductions and payments, and all appropriate unemployment tax payments, in connection with all persons that provide Services hereunder.

Neither Party shall have any right or authority to make any contract, sale or other agreement in the name of or for the account of the other Party, or to make any representation, or to assume,



create or incur any obligation or liability of any kind, express or implied, on behalf of the other Party. Nothing in this Agreement, and no course of dealing between the Parties, shall be construed to create or imply an employment or agency relationship or a partnership or joint venture relationship between the Parties or between one Party and the other Party's employees or agents.

- 12. Force Majeure.** Neither Party shall be liable hereunder for any failure or delay in the performance of its obligations under this Agreement if such failure or delay is on account of causes beyond its reasonable control, including civil commotion, war, fires, floods, accident, earthquakes, inclement weather, telecommunications line failures, electrical outages, network failures, governmental regulations or controls, casualty, strikes or labor disputes, terrorism, pandemics, epidemics, local disease outbreaks, public health emergencies, communicable diseases, quarantines, acts of God, in addition to any and all events, regardless of their dissimilarity to the foregoing, beyond the reasonable control of the Party deemed to render performance of the Agreement impracticable or impossible, for so long as such force majeure event is in effect. Each Party shall use reasonable efforts to notify the other Party of the occurrence of such an event within five (5) business days of its occurrence.
- 13. Governing Law and Venue.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Arkansas, without giving effect to the principles of conflicts of law of such state. The Parties hereby agree that any action arising out of this Agreement will be brought solely in any state or federal court located in Arkansas, Pulaski County. Both Parties hereby submit to the exclusive jurisdiction and venue of any such court.
- 14. Severability.** If any provision or portion of this Agreement shall be rendered by applicable law or held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions or portions shall remain in full force and effect.
- 15. Survival.** Section 4, Warranty, Section 5, Confidentiality, Section 6, Intellectual Property, and Section 10, Non-Solicitation of this Agreement shall survive termination or expiration of this Agreement regardless of the cause and even if resulting from the material breach of either Party to this Agreement.
- 16. Rights Cumulative.** The rights and remedies of the Parties herein provided shall be cumulative and not exclusive of any rights or remedies provided by law or equity.
- 17. Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument, without necessity of production of the others. An executed signature page delivered via facsimile transmission or electronic signature shall be deemed as effective as an original executed signature page.



18. Notices. All notices or other communications required under this Agreement shall be in writing and shall be deemed effective when received and made in writing by either (i) hand delivery, (ii) registered mail, (iii) certified mail, return receipt requested, or (iv) overnight mail, addressed to the Party to be notified at the following address or to such other address as such Party shall specify by like notice hereunder:

Company:

AMERIPRISE FINANCIAL SERVICES, LLC (SMALL & ASSOCIATES FINANCIAL)

Attn: Fran Miceli, CFO

36 Rahling Circle, Suite 2, Little Rock, Arkansas 72223

501-975-7968

Group Five West, Inc.:

810 W 2nd Street

Little Rock, AR 72201

Attention: Lisa Hemme, President

501-952-4744

lisa.hemme@groupfivewest.com

19. Waiver. No waiver of any term or right in this Agreement shall be effective unless in writing, signed by an authorized representative of the waiving Party. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or modification of such provision, or impairment of its right to enforce such provision or any other provision of this Agreement thereafter.

20. Assignment; Third Party Beneficiaries. Neither Party may assign or transfer any right or obligation under this Agreement without the prior written consent of the other Party, which consent shall be unreasonably withheld or delayed. Notwithstanding the foregoing, consent will not be required for an assignment made to any affiliated entity of a Party or if the assignment is carried out as part of a merger, restructuring or reorganization, or sale or transfer of all or substantially all of a Party's assets. There are no third-party beneficiaries to this Agreement.

21. Entire Agreement; Modification. This Agreement, and any exhibits attached hereto, is the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreement or communications between the Parties, whether written, oral, electronic



or otherwise. No change, modification, amendment, or addition of or to this Agreement or any part thereof shall be valid unless in writing and signed by authorized representatives of the Parties.

In witness whereof, the Parties hereto have executed this Professional Services Agreement on the date set forth below.

AMERIPRISE FINANCIAL SERVICES, LLC (SMALL & ASSOCIATES FINANCIAL)

By:

Name: _____
[Signer's Name]
Title: [Signer's Title]
Date: [date]

Group Five West, Inc.

By:

Name: Lisa Hemme
Title: President
Date: [date]