



## Meeting Agenda

### Capital Investment Committee

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Thursday, February 23, 2023

3:30 PM

Board Room

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#### CALL TO ORDER

#### APPROVAL OF MINUTES

1. Consideration Of Approval Of Minutes  
December 8, 2022 Capital Investment Committee Meeting

#### NEW BUSINESS

2. Election Of Chairman And Vice-Chairman, Effective 2023

**Sponsors:** None

3. Consideration To Grant Sewer Availability For 4341 S. Carothers Road (Map 089, Parcel 04400)

**Sponsors:** Michelle Hatcher, Scott Andrews

4. Consideration Of DRAFT Change Order 1 To COF Contract No. 2021-0181, With Spectra Tech, LLC, For The Wastewater Structure Rehabilitation Project For A Cost Increase Of \$150,000

**Sponsors:** Michelle Hatcher, Brian Goodwin, Patricia McNeese

5. Consideration Of DRAFT Change Order 3 To COF Contract No. 2018-0282, A Construction Contract With Civil Constructors, LLC For The SR-96 West Multi-Use Trail - Phases 1 & 2 Project (COF Project No. 2017-002 / TDOT PIN 123098.00) For A Time Extension of Forty One (41) Days And A Cost Increase Of \$21,504.26

**Sponsors:** Paul Holzen, Jonathan Marston, David Hodnett

6. Consideration Of DRAFT Amendment 3 To COF Contract No. 2019-0376, A Professional Services Agreement With Barge Design Solutions, Inc. For The Design Of The Bicentennial Park Project At A Lump Sum Cost Increase Of \$124,300

**Sponsors:** Paul Holzen, Jonathan Marston, Shahad Abdulrahman

7. Consideration Of COF Contract No. 2022-0221, With The Corradino Group For The SR-96 Traffic Signal Improvements Project (TDOT PIN 127913.00) In The Amount Of \$92,165

**Sponsors:** Paul Holzen, Jonathan Marston, Adam Moser

8. Consideration Of COF Contract No. 2022-0286, With Turnberry Homes, LLC (Tavisstock Subdivision) For A Road Impact Fee Offset Agreement For An Amount Not To Exceed \$16,700

**Sponsors:** Paul Holzen, Jimmy Wiseman

9. Consideration Of COF Contract No. 2022-0119, With Barge Design Solutions For Traffic Engineering On-Call Consultant Services

**Sponsors:** Paul Holzen, Jonathan Marston, Adam Moser

10. Consideration Of COF Contract No. 2022-0298, With Corradino Group For Traffic Engineering On-Call Consultant Services

**Sponsors:** Paul Holzen, Adam Moser

11. Consideration Of COF Contract No. 2022-0299, With Kimley Horn Associates For Traffic Engineering On-Call Consultant Services

**Sponsors:** Paul Holzen, Adam Moser

12. Consideration Of COF Contract No. 2022-0300, With Neel Schaffer, Inc For Traffic Engineering On-Call Consultant Services

**Sponsors:** Paul Holzen, Adam Moser

13. Consideration Of Resolution 2022-82, A Resolution For On-Call Traffic Engineering Professional Services Agreements (COF Contract No. 2022-0119, 2022-0298, 2022-0299 & 2022-0300) Authorizing The City Administrator To Execute Work Orders For The Above Contracts

**Sponsors:** Paul Holzen, Adam Moser

14. Capital Projects Dashboard And Status Updates For January & February 2023

**Sponsors:** Paul Holzen

## **OTHER BUSINESS**

## **ADJOURN**

Anyone needing accommodations due to disabilities please contact the ADA Coordinator at 615-791-3277 at least 24 hours prior to the meeting.



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**CAPITAL INVESTMENT COMMITTEE MEETING MINUTES**  
**THURSDAY, DECEMBER 8, 2022 @ 3:30 PM**  
**CITY HALL BOARDROOM**  
**FRANKLIN, TENNESSEE**

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**Committee Members**

Alderman Beverly Burger, Chair  
Alderman Matt Brown, Vice-Chair  
Alderman Brandy Blanton  
Alderman Gabrielle Hanson

**Other Attendees**

|   |                                                  |   |
|---|--------------------------------------------------|---|
| P | Eric Stuckey, City Administrator                 | P |
| P | Michelle Hatcher, Water Management Director      | P |
| P | Jonathan Marston, Engineering Assistant Director | P |
| P | Mayor Ken Moore                                  | P |
|   | Angie Johnson, City Recorder                     | P |
|   | Cayce Anderson, Deputy City Recorder             | P |

**CALL TO ORDER**

Chairman Beverly Burger called the meeting to order at 3:31 p.m.

**APPROVAL OF THE MINUTES**

1. *A motion was made by Vice-Chair Brown, seconded by Alderman Blanton to approve the minutes from the October 27, 2022 Capital Investment Committee. The motion passed unanimously.*

**NEW BUSINESS**

2. **Consideration To Grant Sewer Availability For 4341 S. Carothers Road (Map 089, Parcel 04400)**  
**Michelle Hatcher, Scott Andrews**

The applicants requested a connection to the City sewer in order to complete home renovations. They are proposing the installation of a grinder pump to connect to a new Carothers Subdivision. However, the subdivision requested for connection is not yet constructed, and the timeline for construction is not available at this point.

The applicants are requesting approval via grinder pump; the Water Department is requesting approval via gravity main extension.

Alderman Blanton asks what is the applicants' timeline?

Answer: The applicants plan to make this their long-term home. While there is not a timeline set in stone, they are trying to explore all options before their septic system fails. As the new subdivision is developed, they thought it would be beneficial to do their sewer work in conjunction with the new development.

The Committee feels like it is lacking information on the new development's timeline and cannot make a decision yet.

*A motion was made by Alderman Blanton, seconded by Vice-Chair Brown to Defer the Consideration of Sewer Availability to the February 23, 2023 CIC meeting. The motion passed 4-0.*

3. **Consideration To Deny Sewer Availability For 3978 E. McEwen (Map 061, Parcel 01901)**  
**Michelle Hatcher, Scott Andrews**

This property is located outside of City Limits in the Maze Creek Basin. There is no existing sewer around the area. The property would have to drain over 8.5 miles to a proposed future interceptor that has not been built yet. The applicant is seeking denial, and Staff is recommending denial.

*A motion was made by Vice-Chair Brown, seconded by Alderman Hanson to Recommend Approval of the Denial of Sewer Availability to the Board of Mayor and Alderman. The motion passed 4-0.*

4. **Consideration Of Resolution 2022-64, A Resolution Authorizing Condemnation For The Acquisition Of**

**Property For The South Prong Drainage Basin 36 Inch Sanitary Sewer Improvements Project**  
**Michelle Hatcher, Todd Snackenberg**

To clarify, this Resolution is not condemning anything at this point, it is just providing City Staff the ability to move forward with condemnation if negotiations with the property owner fail.

*A motion was made by Vice-Chair Brown, seconded by Alderman Hanson to Recommend Approval of the Resolution to the Board of Mayor and Alderman. The motion passed 4-0.*

5. **Consideration Of COF Contract No. 2021-0032, With Southstar, LLC, For Liberty Pike Widening (Carothers Pkwy To East Of Knoll Top Lane) Water Main Relocation For An Amount Not-To-Exceed \$348,598.09**  
**Michelle Hatcher**

The developer that widened Liberty Pike impacted the City water main was underneath. Hence, this agreement states that the developer will pay for the relocation of that water main.

Chairman Burger asks who is doing that work?  
Answer: The developer is doing the work.

*A motion was made by Alderman Blanton, seconded by Alderman Hanson to Recommend Approval of the Contract to the Board of Mayor and Alderman. The motion passed 4-0.*

6. **Consideration Of DRAFT COF Contract No. 2022-0295, With Revere Control Systems, Inc., For System Coverage For SCADA Improvements**  
**Michelle Hatcher**

SCADA is the City's distribution and collection system-wide computer monitoring program. It is the platform Staff uses to virtually check pump stations, water tanks, and other system components. It aids efficiency, but sometimes with storms or equipment malfunctions, there is a need to reestablish these communications. Revere Control Systems was the initial integrator who performed that work, so this is just the on-call contract with them. This was budgeted in the general operations budget, split between the sewer collection and water distribution fund.

*A motion was made by Vice-Chair Brown, seconded by Alderman Hanson to Recommend Approval of the Contract to the Board of Mayor and Alderman. The motion passed 4-0.*

7. **Consideration Of DRAFT COF Contract No. 2022-0303, With C&T Engineering And Inspection, For The Water Treatment Valve Access Improvements Project Construction Services For An Amount Not To Exceed \$198,165.00**  
**Michelle Hatcher, Brian Goodwin, Patricia McNeese**

This project has been designed by Staff, and the Board will see the Bid Award soon. It opened today, December 8, 2022. The design plan includes a mezzanine in the water plant because there are some valves that are too high and are inaccessible. The valves are controlled by SCADA, and the City has lost communication with them. Staff cannot backwash one of the granular activated carbon sensors (GacS) that is leaking due to this technical issue. Staff wants the ability to access and manually change valves that are currently automated. The bid received was lower than expected, so this is the construction inspection for that work.

*A motion was made by Alderman Blanton, seconded by Vice-Chair Brown to Recommend Approval of the Contract to the Board of Mayor and Alderman. The motion passed 4-0.*

8. **Capital Projects Dashboard And Status Updates For December 2022**  
**Paul Holzen, Jonathan Marston**

Chairman Burger asks if the developer, SouthStar, LLC, is planning to complete the work on Liberty Pike soon?  
Answer: Staff does not have a timeframe for that project yet.

Mr. Stuckey asked for an update on Franklin Road.

Answer: Weather has been the primary obstacle holding up progress right now. Staff are doing what they can (i.e., sidewalks, streetlights, etc.), but the stone base must dry full before the crew can move forward with paving. The goal is to get a binder down and get the road fully functional as soon as possible, but the final coat will not likely happen until the spring.

Vice-Chair Brown knows that the City is doing some work on Lancaster. He wishes that, at the intersection with Liberty Pike, there had been the foresight not to contrast the new streetlights with the old lights right inside Miles Manor. It would have been nice to light up that entrance as well.

Mr. Stuckey reminds the Committee that are several Parks projects on the brink of going out to bid in 2023. This includes: Bicentennial Park, Phase I of the Southeast Park, Robinson Lake, and the Pedestrian Bridge Project in Harlinsdale.

## **OTHER BUSINESS**

## **ADJOURNMENT**

*A motion was made by Alderman Blanton, seconded by Alderman Brown to adjourn. The motioned passed unanimously.*

Meeting adjourned @ 4:05 p.m.

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Beverly Burger, Chair

Minutes prepared by Sarah Schilling, Assistant Deputy City Recorder, City Administrator's Office 1/9/2023 8:19 AM



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**File #: 21-03991**

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**DATE:** December 22, 2022  
**TO:** Capital Investment Committee  
**FROM:** Michelle Hatcher, Director of Water Management  
Scott Andrews, Utilities Engineer II

**SUBJECT:**

Consideration To Grant Sewer Availability For 4341 S. Carothers Road (Map 089, Parcel 04400)

**PURPOSE:**

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning a recommendation for approval of a request for sewer availability for the above referenced property.

**BACKGROUND/STAFF COMMENTS:**

Date of Request: 8/17/2022.  
SFUE's Requested: 1.  
Domestic Water Meter Size(s): ¾".

This property is located within the City limits, south of the Falcon Creek subdivision. The applicant has requested a connection to City sewer in order to renovate their house. They are proposing installing a grinder pump to connect to the Carothers Glen subdivision planned for two properties across South Carothers and adjacent to Falcon Creek.

This item was originally presented to the Capital Investment Committee on December 8, 2022. At that meeting, the decision was made to defer this item to the February 23, 2023 Capital Investment Committee meeting, in order to allow the applicant time to obtain further information regarding the timeline of the Carothers Glen Development, to which this home would connect with a grinder pump and force main. A letter from the Developer of Carothers Glen is attached. The Water Management Department also requested details of the proposed location, which is standard to any sole installation of sewer to the public system.

**FINANCIAL IMPACT:**

N/A

**RECOMMENDATION:**

Staff continues to recommend that this availability request be approved contingent on the applicant being responsible for installation of a gravity main. Putting this home on a grinder pump and extending a force main to the nearest manhole in Carothers Glen would not be an orderly expansion of the system.



Please fill in the following information & return this form with the site plan per directions below. Incomplete forms will result in the request being returned until all of the information is included. Refer to the attached memo for fees and additional information.

**MUST SUBMIT A LOCATION MAP (FOR EX: GOOGLE MAP)**

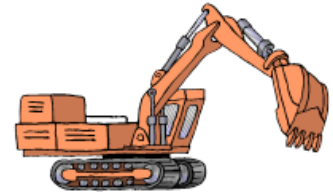
**Email Application to:** [availability@franklinton.gov](mailto:availability@franklinton.gov)

For additional information or questions please call: 615-794-4554

Date Submitted: 8/17/22

# MEMO

TO: Applicant  
FROM: Water Management Department  
DATE: May 2018  
RE: Request for Water and/or Sewer Availability & Associated Costs



When considering development of a tract of land, one of the first steps a developer (or their design professional) should complete is the application for water and sewer availability. **Planned Unit Developments MUST have approved availability to be approved.**

The following items **SHALL** be included with a water and/or sewer availability request:

- Completed Application (ALL sections must be filled in)
- Project location map & Utility Plan (if available)
- Sewage Calculations (For Development projects only; Individual Single Family Homes are not required to submit these calculations).

**Email Application to: [availability@franklinton.gov](mailto:availability@franklinton.gov)**

**For additional information or questions please call: 615-794-4554**

*There is a 30 day maximum turnaround time for the requests. Unless your request requires Board of Mayor & Aldermen (BOMA) approval then applicant will be notified of the date of the BOMA meeting at which your request will be brought up.*

## THE AVAILABILITY IS GRANTED BASED ON THE FOLLOWING TIME PERIODS:

- Construction plans are to be prepared and **submitted within one year from the granting of availability.**
- Construction of the water and sanitary sewer **improvements shall begin within one and one-half (1 ½) years from the granting of availability.**

## OTHER RELATED INFORMATION:

- Pump stations and force mains are not allowed if the development can be served by extension of gravity sewer.
  - Any necessary Pump Station or Force Main shall be subject to approval by Water Dept. Director.
- **No customer shall supply water service to more than one dwelling or premise from a single service line.**

## PROPERTIES OUTSIDE OF CITY LIMITS:

Per **Resolution 2015-32**: Annexation shall be required as a condition of approval for all properties outside the City Limits whether within the City's Urban Growth Boundary, or not, in order to be granted sanitary sewer availability. Annexation shall occur at such time the property becomes contiguous to the City's corporate limits or as determined by the Board of Mayor and Alderman.

- Applicant shall be required to sign the Annexation Agreement **after** Availability Request is approved by BOMA, and **before** the approved letter is issued.

## SINGLE FAMILY APPLICANTS:

- Not all portions of the application will apply, please mark NA to those sections.
- If a main line extension is necessary you will be required to submit a plan & profile set for review and approval.

## MAIN LINE EXTENSION REQUIRED FOR SERVICE:

**Plans shall be submitted for approval:**

- Plans shall include: Site Layout & Location, Existing Utilities, Grading & EPSC, Plan & Profile, and Applicable Details.
- Include Final hydraulic analysis of the line/s. Use the City's standards for flow calculations.
- Water and Sewer Specifications are available on-line (in pdf form) for the convenience of the developer's engineer:  
<http://www.franklinton.gov/government/engineering/development>

## CURRENT SEPTIC SYSTEMS/APPLICANTS WITHIN THE COUNTY:

- Williamson County requires residents wishing to modify the septic system to first request availability with the City. You are required to complete the application and indicate whether you are requesting a denial or approval. (Indication does not guarantee final decision. BOMA must approve or deny your request).
- Septic System must be decommissioned per County standards:  
<http://www.williamsoncounty-tn.gov/index.aspx?NID=126>

If you have any questions concerning this request, contact the City of Franklin Water Department at (615) 794-4554.

**Tap Related Fees\* Does not include \$25 New Account Set up Fee**

| Fee Description:             | Applicable Utility    | Fee Amount:                                |
|------------------------------|-----------------------|--------------------------------------------|
| System Development Fee (SDF) | Water & Sewer         | See Charts Below (based on meter size)     |
| Access Fee                   | Water & Sewer         | See Charts Below (based on meter size)     |
| Effluent Disposal Fee (EDF)  | Sewer                 | See Charts Below (based on meter size)     |
| Tap Fee                      | Water & Sewer         | See Charts Below (based on meter size)     |
| Irrigation Fee               | Water & Reclaim Water | See Charts Below (based on meter size)     |
| Fire Sprinkler Fee (SDF)     | Water (fire)          | \$500 per diameter inch of connection line |

**Effective March 1, 2008, the fees and installation costs are as follows and are paid to the Building & Neighborhood Services Dept. 615-794-7012**

| <b>WATER * City of Franklin Wat</b> |      |      |           |             |                               |                           |                              |
|-------------------------------------|------|------|-----------|-------------|-------------------------------|---------------------------|------------------------------|
| Meter Size                          | SFUE | GPM  | SDF       | Access Fees | Irrigation Meter <sup>1</sup> | Tap Existing <sup>2</sup> | City making Tap <sup>3</sup> |
| ¾"                                  | 1    | 12.5 | \$903     | \$1,186     | \$3,150                       | \$315                     | \$756                        |
| 1"                                  | 13   | 50   | \$3,612   | \$4,746     | \$4,725                       | \$374                     | \$897                        |
| 1 ½"                                | 30   | 120  | \$8,619   | \$11,390    | \$6,300                       | \$656                     | \$1,444                      |
| 2"                                  | 40   | 160  | \$11,558  | \$15,187    | \$7,875                       | \$1,362                   | \$2,223                      |
| 3"                                  | 88   | 350  | \$25,284  | \$33,222    | \$9,450                       | \$1,581                   | \$3,654                      |
| 4"                                  | 125  | 500  | \$36,120  | \$47,460    | \$11,025                      | \$2,668                   | \$5,492                      |
| 6"                                  | 300  | 1200 | \$86,688  | \$113,904   | \$12,600                      | \$4,723                   | \$7,387                      |
| 8"                                  | 375  | 1500 | \$108,360 | \$142,380   | \$14,175                      | \$10,293                  | \$14,110                     |

| <b>SEWER (Fees are based on water meter size regardless of water district)</b> |      |      |           |            |                                |                           |                              |
|--------------------------------------------------------------------------------|------|------|-----------|------------|--------------------------------|---------------------------|------------------------------|
| Meter Size                                                                     | SFUE | GPM  | SDF       | Access Fee | Effluent Disposal <sup>4</sup> | Tap Existing <sup>2</sup> | City Making Tap <sup>3</sup> |
| ¾"                                                                             | 1    | 12.5 | \$1,444   | \$2,100    | \$450                          | \$263                     | \$1,240                      |
| 1"                                                                             | 13   | 50   | \$5,775   | \$8,400    | \$1,800                        | \$263                     | \$1,240                      |
| 1 ½"                                                                           | 30   | 120  | \$13,860  | \$20,160   | \$4,320                        | \$263                     | \$1,240                      |
| 2"                                                                             | 40   | 160  | \$18,480  | \$26,880   | \$5,760                        | \$263                     | \$1,240                      |
| 3"                                                                             | 88   | 350  | \$40,425  | \$58,800   | \$12,600                       | \$263                     | \$1,240                      |
| 4"                                                                             | 125  | 500  | \$57,750  | \$84,000   | \$18,000                       | \$263                     | \$1,240                      |
| 6"                                                                             | 300  | 1200 | \$138,600 | \$201,600  | \$43,200                       | \$263                     | \$1,240                      |
| 8"                                                                             | 375  | 1500 | \$173,250 | \$252,000  | \$54,000                       | \$263                     | \$1,240                      |

1- Irrigation Fees Include Meter Fee & \$25 Application Fee Only

3- City Installs Tap & Meter

2- Contractor Installs Tap & Meter – Subject to Addnl' Inspections

4- Fee Goes to Establishing Effluent Water System; paid with all Sewer Services

**\* All Fees shall be paid prior to the issuance of a Building Permit or Utility Inspection, whichever occurs first. \***

**Private Fire Hydrant and Sprinkler Systems** – The SDF for connection of private fire hydrants and sprinkler system lines to the City of Franklin's (COF) lines shall be **\$500 per inch diameter of connection** to the City's lines. Radio-read meters will be required on all private fire hydrant and sprinkler systems.

**UTILITY PERMIT RELATED FEES: PAID WITH PERMIT, NOT WITH AVAILABILITY REQUEST:**

**Only applicable if extending the water, sewer or reclaim water main lines.**

| Fee Description         | Applicable Utility                 | Fee Amount                                     |
|-------------------------|------------------------------------|------------------------------------------------|
| Plan Review Fee         | Water, Sewer & Reclaim Water       | \$300 Water; \$300 Sewer & \$300 reclaim Water |
| Inspection fees:        | Fee Rate                           |                                                |
| Water Main Line         | \$1.25/LF Water (minimum \$ 1,000) |                                                |
| Sewer Gravity Main Line | \$2.00/LF (minimum \$1,000)        |                                                |
| Sewer Force Main Line   | \$1.50/LF (minimum \$1,000)        |                                                |
| Reclaim Water           | \$1.25/LF (minimum \$1,000)        |                                                |

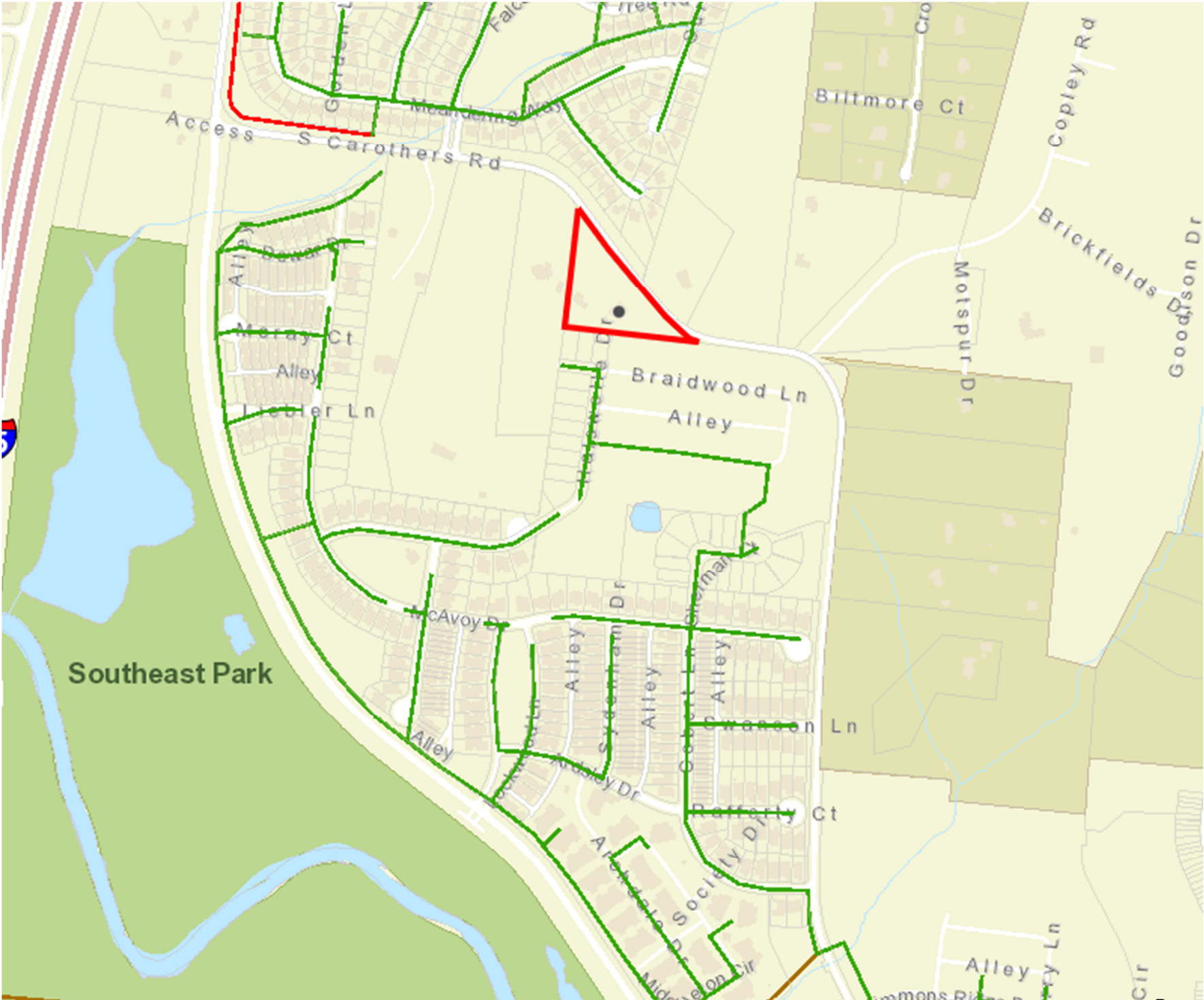
Checks are made payable to the City of Franklin. Please indicate what the payment is for on the check.



### 3 Projected Flow Examples

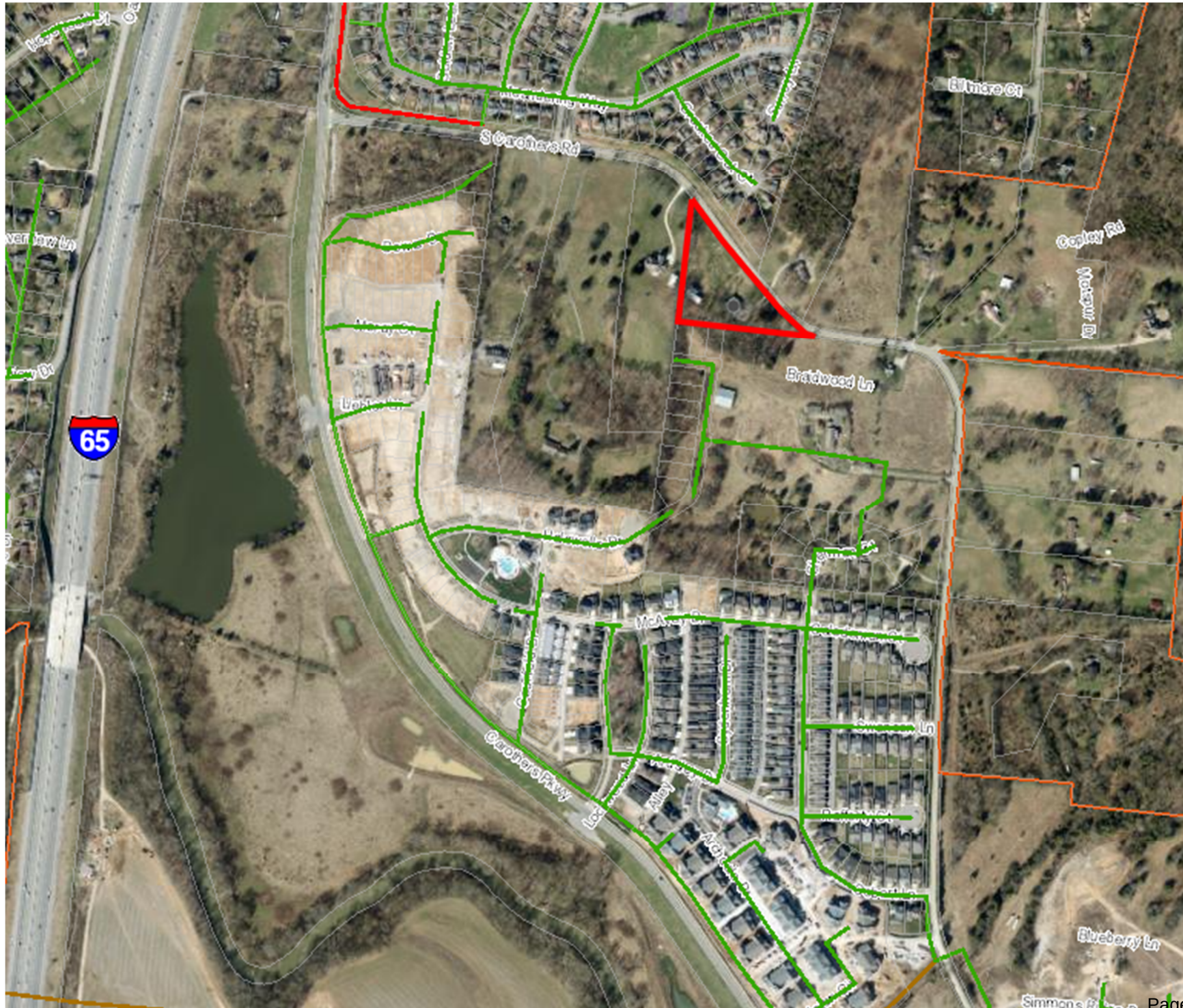
| Drainage Facility                                    | Flow in GPD      | Design Units                                                      |
|------------------------------------------------------|------------------|-------------------------------------------------------------------|
| Apartments -One Bedroom                              | 250              | per unit                                                          |
| Apartment -Two Bedroom                               | 300              | per unit                                                          |
| Apartment -Three Bedroom                             | 350              | per unit                                                          |
| Mobile Home Parks                                    | 300              | per mobile home space                                             |
| Single Family Dwelling                               | 350              | per unit                                                          |
| Assembly Hall (No Food Service)                      | 2                | per seat                                                          |
| Beauty Shop, Styling Salon                           | 200              | per station                                                       |
| Bowling Alleys (no food service)                     | 75               | per lane                                                          |
| Car Wash -(stand alone)                              | 500              | Per bay                                                           |
| Child Care Center                                    | 10               | Per child and adult                                               |
| Churches (small)                                     | 5                | per sanctuary seat                                                |
| Churches (large with kitchen)                        | 7                | per sanctuary seat                                                |
| Country Clubs                                        | 50               | per member                                                        |
| Dance Halls (No Food Service)                        | 2                | per person                                                        |
| Doctors/Dentists                                     | 75<br>20<br>10   | per doctor<br>per employee<br>per patient                         |
| Drive-In Theaters                                    | 5                | per car space                                                     |
| Factories (no showers)                               | 25               | per employee per 8-hour shift                                     |
| Factories (with showers)                             | 35               | per employee -per 8-hour shift                                    |
| Hospitals (no residents) (with food service)         | 300              | per bed                                                           |
| Hotels                                               | 130              | per unit                                                          |
| Institutions (residents) (with food service)         | 100              | per person                                                        |
| Laundries (coin-operated)                            | 400              | per standard size machine                                         |
| Nursing and Rest Homes (with food service)           | 200<br>100<br>50 | per patient<br>per resident employee<br>per non-resident employee |
| Office Buildings                                     | 25               | per employee                                                      |
| Office/warehouse space                               | 0.1              | per square foot                                                   |
| Retail Store                                         | 20               | per employee                                                      |
| Restaurant -Ordinary (not 24-hour)                   | 35               | per seat                                                          |
| Restaurant -24-Hour                                  | 50               | per seat                                                          |
| Restaurant -Banquet Rooms                            | 5                | per seat                                                          |
| Restaurant -Along Freeway                            | 100              | per seat                                                          |
| Restaurant -Tavern (very little food service)        | 35               | per seat                                                          |
| Restaurant -Curb Service (drive-in)                  | 50               | per car space                                                     |
| Service Stations                                     | 1000             | Per fuel island                                                   |
| Schools -Elementary (with food service)              | 15               | per pupil                                                         |
| Schools -High and Junior High (with food service)    | 20               | per pupil                                                         |
| Shopping Centers (no food service or laundries)      | 0.2              | per sq. ft of floor space                                         |
| Swimming Pool                                        | 10               | per swimmer                                                       |
| Theaters, auditorium type                            | 5                | per seat                                                          |
| Youth and Recreation Camps ( <b>w/food service</b> ) | 50               | per person                                                        |

LOCATOR MAP





# LOCATOR MAP (Aerial view)





Neighborhood View





Carothers Land Development Company, LLC  
4300 SIDCO DR STE 200  
NASHVILLE, TN 37204-4537 USA

January 5, 2023

VIA EMAIL

Ms. Amy Diaz Barriga  
City of Franklin, Department of Planning & Sustainability  
109 3rd Avenue South  
Franklin, TN 37064

**RE: Project Information COF Project Number: 7070**  
**Applicant: Michael Dewey, Dewey Engineering**  
**Owner: Carothers Glen Land Development,**  
**Company, LLC**

Dear Amy:

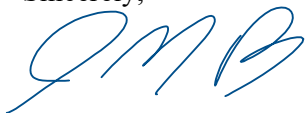
We have been working in conjunction with Robert Paul & Nicole Russell who live at 4341 S Carothers Road, to help facilitate sewer improvements at their residence. They have met with the Capital Improvements Board, who has requested a timeline as to our intentions to develop the property.

We are highly motivated to start working on the above referenced project, as soon as we receiving our grading permit. We are now only waiting on Jeff Willoughby to approve our appraisal which was requested as part of the Right of Way and Easement dedications.

We plan on starting offsite improvements along S Carothers Road in conjunction onsite activities. Generally speaking, after clearing and grading are complete, sanitary sewer would be the first utility installed.

If you or anyone have any questions or concerns, please do not hesitate to reach out to me at (615) 579 0234.

Sincerely,



Jeremy M. Boczulak  
Manager  
Carothers Glen Land Development Company, LLC



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**File #: 21-04322**

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**DATE:** February 15, 2023  
**TO:** Capital Investment Committee  
**FROM:** Michelle Hatcher, Director of Water Management  
Brian Goodwin, Asst. Director of Water Management  
Patricia McNeese, Utilities Engineer

**SUBJECT:**

Consideration Of DRAFT Change Order 1 To COF Contract No. 2021-0181, With Spectra Tech, LLC, For The Wastewater Structure Rehabilitation Project For A Cost Increase Of \$150,000

**PURPOSE:**

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning the DRAFT change order No. 1 to COF Contract No. 2021-0181 with Spectra Tech, LLC for the Wastewater Structure Rehabilitation project for a cost increase of \$150,000.

**BACKGROUND/STAFF COMMENTS:**

The wastewater structure rehabilitation project with Spectra Tech, LLC was approved in June 2022 with the option of extending the contract up to four (4) times for up to one (1) additional year each time. It is the recommendation of the Water Management Department (WMD) that funds from the current budget that have not been spent in FY23 be transferred to the wastewater structure rehabilitation contract in order to line additional manholes. After further investigation into several areas of the wastewater system, WMD has discovered there are wastewater structures in need of repair that are candidates for immediate rehabilitation.

**FINANCIAL IMPACT:**

The cost of the item is an increase of \$150,000 to be funded from the Wastewater Renewal fund (431-89320-52219). There are no grants or loans included. The item is included in the current approved budget.

**RECOMMENDATION:**

Staff recommends that change order No. 1 to COF Contract No. 2021-0181 with Spectra Tech, LLC for the Wastewater Structure Rehabilitation project for a cost increase of \$150,000 be recommended to the Board of Mayor and Aldermen for approval.

**CHANGE ORDER NO.: 1**

Owner: **City of Franklin, TN** Date: **2/15/2023**  
 Engineer: **N/A**  
 Contractor: **Spectra Tech, LLC**  
 Project Name: **Wastewater Structure Rehabilitation**  
 Owners Contract No.: **COF 2021-0181**  
 Effective Date of Change Order: **N/A**

The Contract is modified as follows upon execution of this Change Order:

Description:

**Transfer funds from Fiscal Year 2023 unconstructed previously budgeted water and sewer projects to this contract.**

| Change in Contract Price                                            |  | Change in Contract Times                                            |               |
|---------------------------------------------------------------------|--|---------------------------------------------------------------------|---------------|
| Original Contract Price:                                            |  | Original Contract Times:                                            |               |
| \$ 188,000.00                                                       |  | Effective Date of Award:                                            | June 29, 2022 |
|                                                                     |  | Final Date of Contract:                                             | June 29, 2023 |
| <b>[Increase] [Decrease]</b> from previously approved Change Orders |  | <b>[Increase] [Decrease]</b> from previously approved Change Orders |               |
| \$ 0                                                                |  | Number of days:                                                     | 0             |
| Contract Price prior to this Change Order:                          |  | Contract Times from previously approved Change Order:               |               |
| \$ 188,000.00                                                       |  | Date:                                                               | N/A           |
|                                                                     |  | End Date:                                                           | N/A           |
| <b>[Increase] [Decrease]</b> this Change Order:                     |  | <b>[Increase] [Decrease]</b> this Change Order:                     |               |
| \$ 150,000.00                                                       |  | Number of days:                                                     | 0 days        |
| Contract Price incorporating this Change Order:                     |  | Contract Times with all approved Change Orders:                     |               |
| \$ 338,000.00                                                       |  | Revised Final Date:                                                 | June 29, 2023 |

**Recommended by Project Manager**

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Recommended by Department Director**

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Authorized by Owner**

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

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



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**File #: 21-04174**

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**DATE:** February 6, 2023  
**TO:** Capital Investment Committee  
**FROM:** Paul Holzen, Director of Engineering  
Jonathan Marston, Asst. Director of Engineering  
David Hodnett, Staff Engineer

**SUBJECT:**

Consideration Of DRAFT Change Order 3 To COF Contract No. 2018-0282, A Construction Contract With Civil Constructors, LLC For The SR-96 West Multi-Use Trail - Phases 1 & 2 Project (COF Project No. 2017-002 / TDOT PIN 123098.00) For A Time Extension of Forty One (41) Days And A Cost Increase Of \$21,504.26

**PURPOSE:**

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Change Order No. 3 to the construction contract (COF Contract No. 2018-0282 / TDOT PIN 123098.00) with Civil Constructors, LLC (Civil) for the SR-96 West Multi-Use Trail project.

**BACKGROUND/STAFF COMMENTS:**

On October 13, 2020, the City of Franklin Board of Mayor and Alderman (BOMA) awarded, via Resolution 2020-158, the construction contract (COF Contract No. 2018-0282) for the SR-96 West Multi-Use Trail - Phases 1 & 2 Project (TDOT PIN 123098.00) to Civil in the bid amount of \$4,551,584.00. On December 14, 2021, the BOMA approved Change Order 1 to authorize a time extension of ten (10) calendar days and a cost increase of \$34,555.31 due to conflicts with existing infrastructure. On September 27, 2022, the BOMA approved Change Order No. 2 to authorize a time extension of ninety (90) calendar days and a cost increase of \$96,670.20 due to conflicts with utilities, water line relocation, fiber optic relocations, and AT&T fiber optic lines.

Two (2) additional work items are to the construction contract with Change Order 3:

1. Item SP109B, TDOT Bituminous Index Adjustment to offset the increased cost of asphaltic cement, \$19,935.66, and
2. Item 730-26.11, Pedestrian Push Buttons. The pedestrian push buttons detailed in the plans were installed but would not communicate with the city's older traffic system. Pedestrian push buttons were ordered that would work with the older system, and due to supply chain issues, their arrival and installation was delayed. Forty-one (41) days were requested for contract time. Cost \$1,568.60.



**FINANCIAL IMPACT:**

The original contract amount was for \$4,551,584.00. Change Order 1 was for an increased cost of \$34,555.31. Change Order 2 was for an increased cost of \$96,670.20. Change Order No. 3 is an increased cost of \$21,504.26.

As a reminder, this project was awarded \$1,800,000 in federal funds through the Transportation Alternatives Program (TAP) to assist with the construction costs of this project.

**RECOMMENDATION:**

Staff recommends that Change Order 3 to COF Contract No. 2018-0282 (TDOT PIN 123098.00) with Civil Constructors, LLC, for a time extension of forty one (41) days and a cost increase of \$21,504.26 be recommended to the Board of Mayor and Aldermen for approval.

### Supplemental Agreement and/or Request for Construction Change Change Order Request #3

|                        |                                                    |                      |                      |
|------------------------|----------------------------------------------------|----------------------|----------------------|
| Project Title/Termini: | <u>SR 96 West Multi Use Trail Phases 1 &amp; 2</u> |                      |                      |
| Owner:                 | <u>City of Franklin</u>                            | PIN:                 | <u>123098.00</u>     |
| Address:               | <u>Engineering Department</u>                      | State Project No.:   | <u>94LPLM-F3-092</u> |
|                        | <u>109 3<sup>rd</sup> Avenue South Suite 133</u>   | Federal Project No.: | <u>TAP-96(49)</u>    |
|                        | <u>Franklin, TN 37064</u>                          | Contract No.:        | <u>2018-0282</u>     |
| County:                | <u>Williamson</u>                                  |                      |                      |

Whereas, we Civil Constructors, LLC with Federal Insurance Company, as a Surety, entered into a contract with City of Franklin, on 11/11/2020, for the construction by said Contractor of the above designated contract; and Whereas, certain items of construction encountered, are not covered by the original contract, we desire to submit the following additional items of construction to be performed by the Contractor and paid by the Owner at the price(s) scheduled therefore below:

The purpose of this Change Order is to:

See attached letter dated October 10, 2022, for detailed information to add Item 730-26.11, Pelco Ped Pushbuttons and "Additional Time" request, and to add Item SP109B Bituminous Index for April 2022 to offset increase in asphalt cost.

As a result of this Change Order, contract time shall:

☐ Not Change, ☒ Increase by 41 days, ☐ Decrease by \_\_\_\_\_ days

Original Construction Completion Time: 365days (Date:01/04/22)

Original Contract Amount: \$4,551,584.00

Approved Change Orders: \$131,225.51

Current Change Order: \$ 21,504.26

Pending Change Orders: \$ \_\_\_\_\_

Total Change Orders:: \$152,729.77

Contract Completion Time with Change Orders: 506 days (Date: 05/25/2022)

Unit prices listed below include labor, materials, profit, overhead, and incidentals necessary to complete this work. A separate attached spreadsheet with the same information may be used in lieu of the table below.

[illegible]

Now, Therefore, We, Civil Constructors, LLC, Contractors, and Federal Insurance Company, Surety, hereby agree to the Supplemental Agreement consisting of the above mentioned items and prices, and agree that this Supplemental Agreement is hereby made a part of the original contract and will be performed by this Contractor in accordance with specifications thereof, and that the original contract remain in full force and effect, except insofar as specifically modified by this Supplemental Agreement.

*Marty McWilliams PE, PMP*  
Engineer/CEI (Signature)

Date \_\_\_\_\_

By: Bryan W. Barton, P.E. Date: 2023.01.09 09:35:04-0600

Contractor (Signature) Bryan W. Barton, P.E.

Digitally signed by Bryan W. Barton, P.E.  
DN: c=US, e=barton@civilconstructors.com, o=Civil  
Constructors, LLC, cn=Bryan W. Barton, P.E.  
Date: 2023.01.09 10:47:33-0600

1-9-2023

By: A. Warrington  
Surety (Signature)

Date \_\_\_\_\_

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

Owner (Signature) APPROVED

Date \_\_\_\_\_

By: \_\_\_\_\_  
Local Programs (Signature)

Date \_\_\_\_\_

**APPROVED**

By Simchah Edwards at 8:55 am, Dec 29, 2022





P.O. Box 685  
Franklin, Tennessee 37065



Telephone (615) 236-9000  
Fax (615) 236-9001

October 10, 2022

Mr. David Hodnett, P.E.  
**City of Franklin – Engineering Department**  
109 Third Avenue South  
Franklin, TN 37064

**RE: Time Extension Request**

Federal Project Number: TAP-96(49)  
State Project Number: 94LPLM-F3-092  
Contract No.: 2018-0282  
County: Williamson

Dear Mr. Hodnett:

Through Change Order #2, Civil has been awarded 100 total days of time extension to bring our initial completion date to April 14, 2022.

There were pedestrian push buttons installed on the project per plan that did not communicate back to the City of Franklin's Traffic Center. The City of Franklin requested new push buttons to match their current standards. Due to supply change issues, these push buttons did not get installed until May 25, 2022.

Civil is requesting the new Contract completion date to be May 25, 2022, an add of 41 additional days.

Should you have any questions or require additional information, please contact me at 615.236.9054.



Bryan W. Barton, P.E.  
Senior Project Manager  
Civil Constructors, LLC.

ENGINEERING DEPARTMENT

**Paul Holzen**  
Director/City Engineer



**Dr. Ken Moore**  
Mayor

**Eric S. Stuckey**  
City Administrator

HISTORIC  
**FRANKLIN**  
TENNESSEE

October 21, 2022

TO: TDOT Local Programs  
Simchah Edwards  
Transportation Programs Monitor-Region 3

FROM: David L. Hodnett, P.E.  
Project Manager, City of Franklin

RE: PIN 123098.00  
COF 2018-0282 SR 96 West Multi Use Trail  
Change Order No. 3

The City of Franklin would like to request the contract be modified as follows upon execution of the following Change Order No. 3 and additional work items:

Description:

**Item 730-26.11 Additional Work (Field change to pedestrian audible push buttons)**

The pedestrian push buttons (Polara) detailed in the plans were installed, but the Polara units would not work with the existing older City traffic system (Pelco). Therefore, Pelco units were ordered and due to supply chain issues, their arrival and installation was delayed. Cost **\$1568.60**  
**Days requested: 41**

**Item SP109B Bituminous Index Adjustment**

TDOT Special Provision Item SP109B was not included in the original contract and the City would like to add this item to offset the rising cost of asphalt cement. The non-participating cost is **\$19,935.66**. **Days requested: None**

**Total Days Requested: 41**

**Total Non-Participating: \$ 19,935.66**

**Total Participating: \$1,568.60**

**Total Cost: \$21,504.26**

**RECAP FOR ITEM 109-01.02 Price Adjustment for Bituminous Material**

[illegible]

TOTAL

\$19,935.66

## ITEM 109-01.02 - PRICE ADJUSTMENT for BITUMINOUS MATERIAL

Contract # 2018-0282 Project # 94LPLM-F3-092, TAP-96(49)

Bidding Index (Ib): \$430.83

Current Month/Year: November-21

Paid Estimate Number: 11

Current Index (Ic): \$522.08

Percent of Change: 21.18%

[Calculate if 5% or More Variation (+/-)]

PA2 Formula:  $(Ic - Ib) \times [(BA - RA) / 100] \times Tm$  (Whole Mix)

Ic = Index for Current Month Ib = Index for Bidding BA = % A/C Specified for Bidding RA = % A/C from Recycled Asphalt Material Tm = Tons of Mix

PA 2

| Item Number | Description                 | Tons (Tm): Mix | % Bidding A/C (BA) | % Recycled A/C (RA) | Payment Adjustment |
|-------------|-----------------------------|----------------|--------------------|---------------------|--------------------|
| 411-02.10   | ACS Mix (PG70-22) Grading D | 123.01         | 5.90               |                     | \$662.26           |

\$662.26

PA2

Total Dollar Monthly Bituminous Adjustment for Item 109-01.02

\$662.26

Computed By:

Revision Date: 7-14-2017

## ITEM 109-01.02 - PRICE ADJUSTMENT for BITUMINOUS MATERIAL

Contract # 2018-0282 Project # 94LPLM-F3-092, TAP-96(49)

Bidding Index (Ib): \$430.83

Current Month/Year: April-22

Paid Estimate Number: 16

Current Index (Ic): \$659.17

Percent of Change: 53.00%

[Calculate if 5% or More Variation (+/-)]

PA2 Formula:  $(Ic - Ib) \times [(BA - RA) / 100] \times Tm$  (Whole Mix)

Ic = Index for Current Month Ib = Index for Bidding BA = % A/C Specified for Bidding RA = % A/C from Recycled Asphalt Material Tm = Tons of Mix

**PA 2**

| Item Number | Description                    | Tons (Tm):<br>Mix | % Bidding<br>A/C (BA) | % Recycled<br>A/C (RA) | Payment<br>Adjustment |
|-------------|--------------------------------|-------------------|-----------------------|------------------------|-----------------------|
| 307-02.01   | Asph Conc Mx (PG70-22) Gr A    | 606.41            | 4.00                  | 0.000                  | \$5,538.71            |
| 307-02.08   | Asph Conc Mx (PG70-22) Gr B-M2 | 443.18            | 4.70                  | 0.000                  | \$4,756.20            |
| 411-02.10   | ACS Mix (PG70-22) Grading D    |                   | 5.90                  |                        | \$0.00                |

**\$10,294.91****PA2****Total Dollar Monthly Bituminous Adjustment for Item 109-01.02****\$10,294.91**

Computed By:

Revision Date: 7-14-2017



## ITEM 109-01.02 - PRICE ADJUSTMENT for BITUMINOUS MATERIAL

Contract # 2018-0282 Project # 94LPLM-F3-092, TAP-96(49)

Bidding Index (Ib): \$430.83

Current Month/Year: May-22

Paid Estimate Number: 17

Current Index (Ic): \$705.42

Percent of Change: 63.74%

[Calculate If 5% or More Variation (+/-)]

PA2 Formula:  $(Ic - Ib) \times [(BA - RA) / 100] \times Tm$  (Whole Mix)

Ic = Index for Current Month Ib = Index for Bidding BA = % A/C Specified for Bidding RA = % A/C from Recycled Asphalt Material Tm = Tons of Mix

## PA 2

| Item Number | Description                    | Tons (Tm):<br>Mix | % Bidding<br>A/C (BA) | % Recycled<br>A/C (RA) | Payment<br>Adjustment |
|-------------|--------------------------------|-------------------|-----------------------|------------------------|-----------------------|
| 307-02.01   | Asph Conc Mx (PG70-22) Gr A    |                   | 4.00                  | 0.000                  | \$0.00                |
| 307-02.08   | Asph Conc Mx (PG70-22) Gr B-M2 |                   | 4.70                  | 0.000                  | \$0.00                |
| 411-02.10   | ACS Mix (PG70-22) Grading D    | 554.20            | 5.90                  |                        | \$8,978.49            |

\$8,978.49

PA2

Total Dollar Monthly Bituminous Adjustment for Item 109-01.02

\$8,978.49

Computed By:

Revision Date: 7-14-2017



HISTORIC  
**FRANKLIN**  
TENNESSEE

October 21, 2022

TO: TDOT Local Programs  
Simchah Edwards  
Transportation Programs Monitor-Region 3

FROM: David L. Hodnett, P.E.  
Project Manager, City of Franklin

RE: PIN 123098.00  
COF 2018-0282 SR 96 West Multi Use Trail  
Change Order No. 3

The City of Franklin would like to request the contract be modified as follows upon execution of the following Change Order No. 3 and additional work items:

Description:

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**Days requested: 41**

**Item SP109B Bituminous Index Adjustment**

TDOT Special Provision Item SP109B was not included in the original contract and the City would like to add this item to offset the rising cost of asphalt cement. The non-participating cost is **\$19,935.66**. **Days requested: None**

**Total Days Requested: 41**

**Total Non-Participating: \$ 19,935.66**

**Total Participating: \$1,568.60**

**Total Cost: \$21,504.26**

P.O. Box 685  
Franklin, Tennessee 37065



Telephone (615) 236-9000  
Fax (615) 236-9001

October 10, 2022

Mr. David Hodnett, P.E.  
**City of Franklin – Engineering Department**  
109 Third Avenue South  
Franklin, TN 37064

**RE: Time Extension Request**

Federal Project Number: TAP-96(49)  
State Project Number: 94LPLM-F3-092  
Contract No.: 2018-0282  
County: Williamson

Dear Mr. Hodnett:

Through Change Order #2, Civil has been awarded 100 total days of time extension to bring our initial completion date to April 14, 2022.

There were pedestrian push buttons installed on the project per plan that did not communicate back to the City of Franklin's Traffic Center. The City of Franklin requested new push buttons to match their current standards. Due to supply change issues, these push buttons did not get installed until May 25, 2022.

Civil is requesting the new Contract completion date to be May 25, 2022, an add of 41 additional days.

Should you have any questions or require additional information, please contact me at 615.236.9054.



Bryan W. Barton, P.E.  
Senior Project Manager  
Civil Constructors, LLC.



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**File #: 21-04272**

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**DATE:** February 8, 2023  
**TO:** Capital Investment Committee  
**FROM:** Paul Holzen, Director of Engineering  
Jonathan Marston, Asst. Director of Engineering  
Shahad Abdulrahman, Staff Engineer

**SUBJECT:**

Consideration Of DRAFT Amendment 3 To COF Contract No. 2019-0376, A Professional Services Agreement With Barge Design Solutions, Inc. For The Design Of The Bicentennial Park Project At A Lump Sum Cost Increase Of \$124,300

**PURPOSE:**

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Amendment 3 to the Professional Services Agreement (PSA) with Barge Design Solutions, Inc. (Barge) for additional engineering services in the design of Bicentennial Park.

**BACKGROUND/STAFF COMMENTS:**

On March 10, 2020, the BOMA approved a PSA (COF Contract No. 2019-0376) with Barge to provide design services for the Bicentennial Park Project. Amendment 3 will allow the Barge team to provide additional services during the construction of the project.

**FINANCIAL IMPACT:**

The original contract was for a lump sum of \$439,500. Amendment 3 is \$124,300. Expenses for the original contract have been billed to the General Ledger (GL) code of 155-89310-44704, which corresponds to the Parkland Dedication Quadrant 4 Fund. It is anticipated that the additional expenses of Amendment 3 will be billed to the same source, unless otherwise directed by the Finance Department.

**RECOMMENDATION:**

Staff recommends that Amendment 3 To COF Contract No. 2019-0376 be recommended to the Board of Mayor and Aldermen for approval.

**AMENDMENT 3 TO  
PROFESSIONAL SERVICES AGREEMENT  
FOR BICENTENNIAL PARK PROJECT  
COF Contract No. 2019-0376**

**THIS AMENDMENT** is made and entered into on this the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the **City of Franklin, Tennessee ("City")** and **Barge Design Solutions, Inc. ("Consultant")**.

**WITNESSETH:**

**WHEREAS**, on 10<sup>th</sup> of March 2020, the City and the Consultant entered into a Professional Services Agreement ("Agreement") entitled **Bicentennial Park Project**; and

**WHEREAS**, said Agreement stipulated that the Consultant would be paid a lump sum fee of Four Hundred Thirty Nine Thousand Five Hundred and No/100 DOLLARS (\$439,500.00) to provide engineering design services as detailed in the Scope of Services; and

**WHEREAS**, The project will start construction and will require CA (construction Administration) services from the consultant; and

**WHEREAS**, the Consultant has provided a Proposal ("Attachment A"), dated November 1, 2022, to provide the additional services requested by the City at a Lump Sum Cost Increase of **One Hundred Twenty Four Thousand Three Hundred and 00/100 DOLLARS (\$124,300.);** and

**WHEREAS**, the City has reviewed the Proposal and desires to enter into an Amendment to the Agreement for the Project as proposed.

**NOW, THEREFORE**, in consideration of these premises and the mutual promises contained herein, it is agreed by and between the parties as follows:

1. The foregoing recitals are incorporated by reference as if fully stated herein.
2. Consultant's Responsibilities and Duties. The Consultant agrees to perform the work as proposed in Attachment A, dated November 1, 2022, which includes the Scope of Services for this Amendment, all of which shall be considered as an integral part hereof.
3. City's Responsibilities and Duties. The City shall pay the Consultant for the cost of the work as described in Attachment A in the Lump Sum amount of **One Hundred Twenty-Four Thousand Three Hundred and 00/100 DOLLARS (\$124,300.)**

The City reserves the right to issue any payments jointly to the Consultant and Sub-Consultant when the City receives information that the Consultant has not paid its Sub-Consultant.

4. Waiver. Neither party's failure nor delay exercising any of its rights or powers under this Amendment will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.



5. Severability. If any term or provision of the Amendment is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Amendment will not be affected.

6. Precedence. In the event of conflict between this Amendment and the provisions of the previous Agreement(s), or any other contract, agreement or other document to which this Amendment may accompany or incorporate by reference, the provisions of this Amendment will, to the extent of such conflict (or to the extent the Agreement is silent), take precedence unless such document expressly states that it is amending this Amendment.

7. Entire Agreement. The Amendment between the parties supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of the entire Amendment. The terms and conditions of this Amendment may not be changed except by an amendment expressly referencing this Amendment by section number and signed by an authorized representative of each party.

8. Additions/Modifications. If seeking any addition or modification to the Amendment, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Amendment, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Amendment or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Amendment; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.

9. Breach. Upon deliberate breach of the Amendment by either party, the non-breaching party shall be entitled to terminate the Amendment without notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

10. Survival. This Amendment shall survive the completion of or any termination of the original contract, revised contract, or agreement or other document to which it may accompany or incorporate by reference.

All other provisions of the Agreement, dated March 10<sup>th</sup> 2022, are unchanged and remain in full force and effect.

*(Signatures on Following Page)*

**IN WITNESS WHEREOF**, the parties have executed this Amendment.

**THE CITY OF FRANKLIN, TENNESSEE:**

**Barge Design Solutions, Inc.:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

Name: Dr. Ken Moore

Name: \_\_\_\_\_

Title: Mayor

Title: \_\_\_\_\_

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

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

**Attest:**

\_\_\_\_\_  
(Signature)

Eric S. Stuckey  
City Administrator

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

**Approved as to Form:**

\_\_\_\_\_  
, Staff Attorney

November 1, 2022  
File No. 35968-01

Ms. Shahad Abdulrahman  
City of Franklin  
109 Third Avenue South  
Franklin, Tennessee 37064

**RE: BICENTENNIAL PARK – CONTRACT AMENDMENT #3**

Dear Ms. Abdulrahman:

Barge Design Solutions, Inc. (Barge) encloses the details of Contract Amendment #3 to provide Limited Construction Administration and other requested services as detailed in Attachment A.

If we have not fully addressed your project requirements, or if you have questions regarding the proposal, please advise me immediately by calling (615) 252-4329.

We anticipate this work being performed under the terms and conditions of the current Bicentennial Park contract with the fee being adjusted to accommodate Amendment #3. Please let us know if this is not the case.

Sincerely,  
**Barge Design Solutions, Inc.**



Adrian Ward  
Manager

Enclosures

cc: Mr. Paul Holzen, City of Franklin  
Ms. Lisa Clayton, City of Franklin  
Barge Project Team

~F:\35\35968....\2022\_08\_05\_PSA\_Amendment\_3\_Final.docx

**August 25, 2022 (Revised November 1, 2022)**

The scope of work is presented in the following elements.

- I. Project Description
- II. Scope of Services
- III. Project Understanding, Assumptions, and Exclusions
- IV. Time of Performance
- V. Client's Responsibilities
- VI. Deliverables
- VII. Compensation

**I. Project Description**

The Bicentennial Park Improvements project is located in the City of Franklin between 3rd Avenue, North Margin Street, and the Harpeth River and consists of approximately 10 acres. This project amendment includes bidding support, limited construction administration, and other services as requested by the City of Franklin (the City).

**II. Scope of Services**

Barge proposes the following Scope of Services.

**Limited Construction Administration**

Barge proposes to provide limited construction administration services which include the following services:

- A. Answer questions from contractors during the bidding of the project.
- B. Make a recommendation for award.
- C. Provide shop drawing reviews in accordance with the requirements as set forth in the specification section 01 33 00 of the Construction Documents.
- D. Answer contractor questions during construction in the form of Request for Information (RFI) as stipulated in specification section 01 33 00 of the Construction Documents. An allowance of answering twenty (20) RFIs has been included in the fee.
- E. Attend site/progress meetings as requested by the City to review and evaluate the work at appropriate intervals during construction. At a minimum, Barge has included the following:
  - 1. Monthly progress meetings onsite. For the purpose of this proposal, a twelve- (12)-month construction period has been assumed which will include twelve (12) 4-hour site visits for an onsite Owner/Architect/Contractor (OAC) meeting. This meeting will typically include two (2) individuals (one [1] civil engineer and one [1] other professional). The other professional listed above will be a landscape architect, architect, structural engineer, mechanical engineer, electrical engineer, or irrigation consultant as appropriate to the stage of construction and/or the City's representative request.
  - 2. One (1) final walkthrough which will include review of the completed project to determine if the project is substantially complete and to generate a punch list of final items requiring correction/completion to the satisfaction of the City. Final completion of the final punch list items will be reviewed and determined complete by the City. The following disciplines will be in attendance at the final walkthrough of the project:
    - a. Civil

**August 25, 2022 (Revised November 1, 2022)**

- b. Landscape Architectural
  - c. Architectural
  - d. Structural
  - e. Mechanical and Plumbing
  - f. Electrical
  - g. Fire Protection
  - h. Irrigation
- F. Miscellaneous client-requested services – Additional construction administration services not listed above, but requested by the City, will be based on an hourly, not to exceed, amount. Upon requests by the City's representative for additional services, Barge will provide a scope of work and an estimated dollar value prior to proceeding with the work. Authorization for these services will require an approval via email by the City's representative. Once the maximum amount of this budget has been met, an additional change order will be required to extend the fee to a new maximum amount.

### **III. Project Understanding, Assumptions, and Exclusions**

- A. Additional shop drawing reviews provided by the contractor but not requested by the engineer or architect will be returned without review. In the case where the City requests additional reviews, these can be provided at an hourly rate in accordance with Exhibit A. Barge recommends that the City provide a separate contingency budget for these services in order that the services can be authorized with an email authorization that includes an agreed upon scope and fee.
- B. Barge assumes that the final walkthrough date and time will be established by the contractor with approval by the City that the work is complete and in accordance with the construction documents. If work is not found to be substantially complete, it will be noted in the punch list. It is assumed that the City will provide the final acceptance of the substantial completion. If requested, additional site visits by Barge personnel will be an additional service.
- C. Barge will have access to the site and adjoining areas, as required.
- D. Any Special Waste Permit requirements from Tennessee Department of Environment and Conservation (TDEC), as well as associated fees, are by the contractor or the City.
- E. Assumes project is not to be Leadership in Energy and Environmental Design (LEED) - certified.
- F. The only reimbursable expenses that will be allowed under this contract are permit fees and third-party review fees, which shall be paid by the Consultant and shall be reimbursed at direct cost by the City. All other incidental costs (i.e. printing, travel, etc.) shall be considered normal business expenses and shall be included in the standard pricing presented by the Consultant in the Scope of Services and/or Fee Schedule."

### **IV. Additional Services**

The following excluded services can be provided as an additional service with an appropriate adjustment in fees and schedule.



**August 25, 2022 (Revised November 1, 2022)**

- A. Other construction administration services not listed above which can include, but are not limited to, review of pay applications and certificate for payment, substitution requests, As - recorded drawings, cost estimating and reviews, additional OAC meeting attendance, etc.
- B. Environmental services to support excavation in the brownfield.
- C. LEED design, documentation, and administration.
- D. As-built surveys and/or construction record surveys.
- E. Record drawing preparation based upon markups prepared by the general contractor.
- F. Development of perspective and/or presentation drawings.
- G. Marketing services (web art, color plans, 3D model construction, still photography).

**V. Time of Performance**

Barge is prepared to begin work immediately upon award and execution of the construction contract for a time period up to and including twelve (12) months of construction.

**VI. Client's Responsibilities**

Barge strives to work closely with our clients. For the project team to function efficiently, certain information is needed to be provided by client and other interested stakeholders in a timely manner. These items and responsibilities are noted below.

- A. Provide information, collaboration, and decisions as required to support completion of the scope of work as described in this Agreement.
- B. Provide review comments in a timely manner.
- C. Provide single point of contact for project coordination purposes.
- D. Provide project budget.

**VII. Deliverables**

The following is a list of probable deliverables that will be produced as part of this effort.

- A. PDFs of RFIs
- B. PDFs of appropriate response to shop drawings and submittals
- C. PDFs of site visit report
- D. PDFs of Final Punch List

**VIII. Compensation**

The compensation to be paid to Barge for providing requested services shall be as follows.

|                                     |                       |           |
|-------------------------------------|-----------------------|-----------|
| Limited Construction Administration | Lump Sum              | \$94,300  |
| Miscellaneous Services              | Hourly, Not to Exceed | \$30,000  |
| Total Contract Value                | Mixed Fee Type        | \$124,300 |

# BARGE DESIGN SOLUTIONS, INC.

## EXHIBIT A – SCHEDULE OF STANDARD CHARGES

### HOURLY-RATE BASIS

Hourly Rates:

|                                                                                           |          |       |
|-------------------------------------------------------------------------------------------|----------|-------|
| Principal Engineer, Planner, or Architect .....                                           | \$170 to | \$295 |
| Professional Engineer, Planner, Architect,<br>Landscape Architect, or Land Surveyor ..... | 100 to   | 250   |
| Graduate Engineer, Planner, or Architect.....                                             | 70 to    | 150   |
| Designer or Technician .....                                                              | 60 to    | 130   |
| Drafter, Administrative Assistant, etc.....                                               | 50 to    | 120   |
| Construction Representative .....                                                         | 50 to    | 110   |
| Surveyor .....                                                                            | 40 to    | 100   |

Outside services contracted for a specific project, such as professional and technical consultants, laboratory testing, reproduction, photography, etc., will be invoiced at the amount of the subcontractor's statement. Submittal fees and other applicable expenses will be invoiced at cost.

Barge contract employees (non-Barge payroll) utilized by Barge in the provision of services under this agreement will be billed at a multiple of 1.6 times the expenses incurred by Barge for time chargeable to the work.

Invoices will be issued monthly.

NOTE: The average three-member survey crew rate ranges from \$140 to \$250 per hour, depending upon the mix of personnel used.

An annual escalation of hourly rates of 3% - 5% will be applied one year from the date of the professional services agreement



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**File #: 21-04161**

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**DATE:** January 10, 2023  
**TO:** Capital Investment Committee  
**FROM:** Paul Holzen, Director of Engineering  
Jonathan Marston, Asst. Director of Engineering  
Adam Moser, Traffic Engineer

**SUBJECT:**

Consideration Of COF Contract No. 2022-0221, With The Corradino Group For The SR-96 Traffic Signal Improvements Project (TDOT PIN 127913.00) In The Amount Of \$92,165

**PURPOSE:**

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning COF Contract No. 2022-0221.

**BACKGROUND/STAFF COMMENTS:**

This Professional Services Agreement (PSA) is with Corradino Group, Inc. (Corradino) for the SR-96 (Murfreesboro Road) Traffic Signal Improvements Project. This professional services agreement is for the Construction Engineering and Inspection (CEI) services providing oversight for the SR-96 Traffic Signal Improvements Project. Corradino Group Inc was selected through a Request for Qualifications (RFQ) process in which a City staff technical review committee evaluated submittals choosing the highest scored submittal (Corradino Group) for this project. Corradino Group was selected overall due to their strength of staff and understanding of the work involved for this project, which is mostly changing out vehicle detection, traffic signal heads, traffic signal cabinets, and associated work along 13 intersections on SR-96E (Murfreesboro Road), from Eddy Lane to Arno Road. The consultant has worked with the City on past similar projects.

**FINANCIAL IMPACT:**

The total cost associated with this PSA is \$92,165. This project is funded 100% through a Congestion Mitigation Air Quality (CMAQ) federal grant. The CEI scope and fee were negotiated to ensure compliance with the current available budget for this project through the federal grant.

**RECOMMENDATION:**

Staff recommends that the PSA (COF Contract No. 2022-0221) with Corradino Group, Inc. be recommended to the Board of Mayor and Aldermen for approval.

**CITY OF FRANKLIN, TENNESSEE  
PROFESSIONAL SERVICES AGREEMENT  
COF Contract No.2022-0221**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **THE CORRADINO GROUP, INC.** hereinafter referenced as Consultant, who mutually agree as follows:

**DECLARATIONS.** City desires to retain Consultant to provide engineering, related technical, and other services in connection with City's project hereinafter referenced as Project. The Project is described as follows:

**Construction, Engineering Inspection Services on the SR-96 Traffic Signal  
Improvements Project (PIN 127913.00)**

1. SCOPE OF SERVICES. Consultant shall provide engineering related technical services and /or construction engineering and inspection services, and/or survey services/ and or appraisal services for the Project in accordance with the Scope of Services (Services) as found in Attachment A which shall be considered as an integral part hereof.
2. Consultant shall submit as a part of Attachment A an individual Fee Schedule and a Completion Schedule for the Project based on the detailed Scope of Services.
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.
4. Consultant shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A in the Amount of ninety two thousand one hundred sixty five (\$92,165.00).

**The Board of Mayor and Aldermen Approved this Agreement on the  
\_\_\_\_\_ Day of \_\_\_\_\_ 2023.**

Law approved template 11.10.2022

Law Dept approved 02.13.23

## **TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES**

### **ARTICLE 1. SERVICES.** Consultant will:

- 1.1 Act for City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry:
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Designate, in writing, the sole Project representative to coordinate with City the Services to be provided, including all contact information.
- 1.5 Unless provided for in the Project Scope of Services (Attachment A), Consultant shall perform all Services with his own forces (employees). Should sub-consultants be proposed to be used in the Project, a listing of said sub-consultants with Services to be performed shall be provided. After approval of this Agreement, no substitute for sub-consultants shall be allowed unless approved by City.
- 1.6 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by City at all reasonable times.

### **ARTICLE 2. CITY'S RESPONSIBILITIES.** City, or its authorized representative, will:

- 2.1 Provide Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the City.
- 2.2 Furnish right-of-entry onto the Project site for Consultant's necessary field studies and surveys. Consultant will endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.
- 2.3 Designate, in writing, the sole Project representative to coordinate with and direct the Consultant, including all contact information.
- 2.4 Guarantee to Consultant that it has the legal capacity to enter into this contract and that sufficient monies are available to fund Consultant's compensation.

### **ARTICLE 3. GENERAL CONDITIONS.**

- 3.1 Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.

Law approved template 11.10.2022

Law Dept approved 02.13.23



- 3.2 Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the Project acting upon written instruction issued by the Consultant.
- 3.3 Neither City nor Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party.
- 3.4 **ALLOCATION OF RISK AND LIABILITY; GENERAL.** Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this Article.
- 3.5 **INDEMNIFICATION.** Consultant agrees to indemnify and hold City harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by Consultant's negligent act, error or omission in the performance of the services of this Agreement. In the event judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of Consultant and City, they shall be borne by each party in proportion to its own negligence.
- 3.5.1 **SURVIVAL.** The terms and conditions of this paragraph shall survive completion of this services agreement.
- 3.6 **LIMITATIONS OF RESPONSIBILITY.** Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, Scope of Services ; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to City or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to Consultant in Attachment A, Scope of Services.

**ARTICLE 4. TERMINATION BY THE CITY.** The City may terminate this Agreement in accordance with the following terms and conditions:

- 4.1 **Termination for Convenience.** The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the Consultant shall stop work when such termination becomes

effective. The Consultant shall also terminate outstanding orders and subcontracts for the affected work. The Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Consultant has in its possession or control. When terminated for convenience, the Consultant shall be compensated as follows:

- (1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.
- (2) The City and the Consultant may agree to the compensation, if any, due to the Consultant hereunder.
- (3) Absent agreement to the amount due to the Consultant, the City shall pay the Consultant the following amounts:
  - (a) Contract costs for labor, materials, equipment and other services accepted under this Agreement;
  - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the Consultant would have not profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

The total sum to be paid the Consultant under this Section shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- 4.2 Termination for Cause. If the Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Agreement, then the City, in addition to any other rights it may have against the Consultant or others, may terminate the performance of the Consultant, in whole or in part at the City's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, the Consultant shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Consultant. Otherwise, the Consultant shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Agreement.

In the event the employment of the Consultant is terminated by the City for cause pursuant to this Section and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Section and the provisions of Section 4.1 shall apply.

- 4.3 Termination for Non-Appropriation. The City may also terminate this Agreement, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of such funds, and such termination shall be on the terms of Section 4.1.
- 4.4 The City's rights under this Section shall be in addition to those contained elsewhere herein or provided by law.

**ARTICLE 5. SCOPE OF SERVICES.** Consultant shall provide the Services as described in Attachment A, Scope of Services.

- 5.1 By mutual agreement, this Agreement and scope can be amended by the parties. The scope and fee for any additional tasks or services under such amendment shall be mutually negotiated and agreed to in writing prior to beginning such additional tasks or services.

**5.2 ENVIRONMENTAL RESPONSIBILITY.**

Where drilling/sampling services are involved, the samples obtained from the Project site are the property of the City. Should any of these samples be recognized by the Consultant to be contaminated, the City shall remove them from the Consultant's custody and transport them to a disposal site, all in accordance with applicable government statutes, ordinances, and regulations. For all other samples, the Consultant shall retain them for a sixty (60)-day period following the submission of the drilling/sampling report unless the City directs otherwise; thereafter, the Consultant shall discard the samples in accordance with all federal, state and local laws.

**ARTICLE 6. SCHEDULE.**

- 6.1 **TIME OF THE ESSENCE.** The parties agree that time is of the essence with respect to the parties' performance of all provisions of the Agreement.
- 6.2 Before executing this Agreement, the Consultant shall have prepared and submitted for approval to the City a Completion Schedule for the Project with milestones for the various stages (tasks) of the Services as outlined in the Scope of Services. The Consultant shall submit and obtain the City's approval for any proposed changes to the logic, durations, sequences, or timing of tasks as approved in the Completion Schedule.
- 6.3 **FORCE MAJEURE.** Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.
- 6.4 Should City request changes in the scope, extent, or character of the Project, the fee and the time of performance of Consultant's Services as indicated in Attachment A shall be adjusted equitably.

## **ARTICLE 7. USE OF DOCUMENTS, DATA.**

7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to the Project. Consultant shall retain an ownership and property interest therein (including the right of reuse at the discretion of the Consultant) whether or not the Project is completed.

7.1.1 **USE OF DATA SYSTEMS:** Ownership, property interests and proprietary rights in data systems used by Consultant do not extend to the data created by or supplied to Consultant by the City; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation.

7.1.2 **DISCLOSURE OF DOCUMENTS/DATA.** City may be required to disclose documents or data under state or federal law. City shall notify Consultant if a request for data or documents has been made and shall give Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. Consultant waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, Consultant agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Consultant representation that materials supplied by Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Consultant and Consultant assumes control over that claim.

7.2 By execution of this Agreement, Consultant and his sub-consultant(s) grant the City a royalty-free, perpetual, irrevocable, and assignable license to use any and all intellectual property interest Consultant or his sub-consultant(s) possess to any drawings, details, specifications, documents, and other information created before each of their first involvement with the Project and subsequently incorporated into the Project's documents. City-furnished data that may be relied upon by Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by City shall be used by Consultant only for the Project as described herein. City's posting or publication of such documents created by Consultant for City shall constitute fair use and shall not constitute an infringement of Consultant's copyright, if any.

- 7.3 Documents that may be relied upon by City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by Consultant to City are only for convenience of City, unless the delivery of the Project in electronic media format has been dictated in Attachment A, Scope of Services. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.
- 7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by City.
- 7.5 When transferring documents in electronic media format, Consultant makes no representations as to long term compatibility, usability, or readability, of documents resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, Consultant at the beginning of this Project.
- 7.6 City may make and retain copies of Documents for information and reference in connection with use on the Project by the City, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by City or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, will be at City's sole risk and without liability or legal exposure to the Consultant or to Consultant's sub-consultants.
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 7.8 Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle Consultant to further compensation at rates to be agreed upon by City and Consultant.

## **ARTICLE 8. INSURANCE.**

- 8.1 During the performance of the Services under this Agreement, Consultant shall maintain the following minimum insurance:
- a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
  - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.



- c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
  - d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 Consultant shall add the City an additional insured on all policies unless otherwise prohibited.
- 8.3 Consultant shall, upon execution of this Agreement, furnish City certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty (30) days' written notice to City.
- 8.4 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. City agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as City deems adequate to indemnify City, Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

#### **ARTICLE 9. PAYMENT.**

- 9.1 City will pay Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope of Services. Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. City shall give prompt written notice of any disputed amount and shall pay the remaining amount.
- 9.2 Consultant shall be paid in full for all services under this Agreement, including City authorized overruns of the Project budget or unforeseen need for Consultant's services exceeding the original Scope of Services.
- 9.3 **TRAVEL; EXPENSES**  
City shall reimburse reasonable expenses, including travel and meals, when specified in the Scope of Services, but only in accordance with the City's Travel and Expense Policy and Procedures Manual. The maximum amount will be applied as of the date of travel and as listed in the per diem reimbursement rates on the "CONUS" website developed by the United States General Services Administration, located at [www.gsa.gov](http://www.gsa.gov) [click on 'per diem rates' under the 'etools' category].

## **ARTICLE 10. MISCELLANEOUS PROVISIONS**

- 10.1 **EQUAL EMPLOYMENT OPPORTUNITY.** In connection with this Agreement and the Project, City and Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. City and Consultant will take affirmative action to ensure that the contractor used for the Project does not discriminate against any employee and employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.1.1 Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.2 **TITLE VI – CIVIL RIGHTS ACT OF 1964.** City and Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.
- 10.2.1 Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.3 **NO THIRD PARTY RIGHTS CREATED.** City and Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to their successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement. The Services provided for in this Agreement are for the sole use and benefit of City and Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Consultant.
- 10.4 **WARRANTIES/LIMITATION OF LIABILITY/WAIVER.** City reserves all rights afforded to local governments under law for all general and implied warranties. City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Consultant to limit its liability shall be void and unenforceable.
- 10.5 **IRAN DIVESTMENT ACT** By 1) entering into this Agreement and/or by 2) submission of a bid or proposal to the City of Franklin, the Consultant and each person signing on behalf of any Consultant, certifies, and in the case of a joint bid or proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that neither they, nor any assignee of the resulting contract, is on the list created pursuant to T.C.A. § 12-12-106. The Consultant further certifies that it shall not utilize any

subcontractor/subconsultant identified on the list created pursuant to T.C.A. § 12-12-106.

- 10.6 **NON-BOYCOTT OF ISRAEL** Except for any contract with a total potential value of less than \$250,000, each consultant, except those with fewer than ten employees, and each person signing on behalf of any such consultant, by entering into this agreement certifies, under penalty of perjury, that, to the best of its knowledge and belief, such consultant is not currently engaged in, and will not, for the duration of any such contract, engage in, a boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.

#### **ARTICLE 11. EXTENT OF AGREEMENT:**

- 11.1 **APPLICABLE LAW/CHOICE OF FORUM AND VENUE.** This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.
- 11.2 **ENTIRE AGREEMENT.** This Agreement, including these terms and conditions, represent the entire Agreement between City and Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by City and Consultant.

#### **ARTICLE 12. DISPUTE RESOLUTION, BREACH.**

- 12.1 If a dispute should arise relating to the performance of or payment for the Services under this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to this Agreement. No arbitration or mediation shall be binding.
- 12.2 **BREACH.** Upon deliberate breach of the Agreement by either party, the non-breaching party shall be entitled to terminate the Agreement with notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

#### **ARTICLE 13. SURVIVAL.**

The provisions contained in this Professional Services Agreement shall survive the completion of or any termination of the Agreement, contract

or other document to which it may accompany or incorporate by reference or which subsequently may be modified, unless expressly excepted from this Article upon consent of both parties.

BY: \_\_\_\_\_  
Consultant's Signature  
TITLE: \_\_\_\_\_  
Date: \_\_\_\_\_

BY: \_\_\_\_\_  
Dr. Ken Moore  
Mayor  
Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
William E. Squires, Assistant City Attorney

## THE CORRADINO GROUP, INC.

CORRADINO

ENGINEERS • PLANNERS • PROGRAM MANAGERS • ENVIRONMENTAL SCIENTISTS

January 6, 2023

Mr. Adam Moser  
Traffic Engineer  
City of Franklin Engineering Department  
109 3<sup>rd</sup> Avenue South, Suite 133  
Franklin, TN 37064

SUBMITTED VIA EMAIL TO ADAM.MOSER@FRANKLINTN.GOV

**RE: Scope of Services and Cost Proposal for Professional Services to Provide Construction Engineering Inspection (CEI) on the City of Franklin's SR-96 Traffic Signal Improvements Project (PIN 127913.00)**

Dear Adam,

The Corradino Group is pleased to submit this Scope of Services and Cost Proposal to the City of Franklin for construction engineering and inspection (CEI) services for the SR-96 Traffic Signal Improvements project. Services to be provide will consist of construction management and oversight, inspection, and materials testing per TDOT LPDO guidelines.

**PROFESSIONAL SERVICES**

The scope of work will consist of the following services. Please see **Exhibit A – Scope of Work** for a fully detailed Scope of Work.

- Project Management and Administration
- TDOT Local Programs Reporting & Coordination
- Construction Engineering and Inspection (Full-time Inspection estimated at 5 days per week for 6 weeks)
  - Corradino understands that inspection staff is not expected to be on-site during periods of inactivity by the Contractor
- Materials Testing as required by TDOT LPDO
- Project Closeout per TDOT LPDO requirements

**TIME of SERVICE**

The Corradino Group will begin working with the City upon receipt of an executed contract and will complete professional services within 13 months, beginning with the preconstruction meeting and having a construction duration of 12 months (365 calendar days). One month will be for project closeout.

**FEE**

Services for this project will be billed monthly at a direct labor rate, plus our current TDOT audited overhead rate with net fee applied. A detailed Fee Schedule can be found in **Exhibit B – Fee Schedule**. A summary of our not to exceed fee is as follows.

|                                     |             |
|-------------------------------------|-------------|
| Total Labor for CEI Services .....  | \$89,350.00 |
| Direct Expenses .....               | \$1,815.00  |
| Materials Testing (TTL, Inc.) ..... | \$1,000.00  |

**Estimated Total for CEI Services ..... \$92,165.00**

Corradino will subconsultant materials testing to be billed as a unit cost direct expense for each test. We estimate testing will be necessary to verify concrete, perform gradations on basestone, and density certification (if required). The cost provided is an estimate based on the project schedule and recommended testing frequency outlined by TDOT and LPDO.

**ADDITIONAL SERVICES**

Any services not specifically outlined in this Proposal are considered as additional services and can be provided upon written approval. Additional services will be billed at direct hourly rates.

We appreciate the opportunity to present this Proposal to the City of Franklin and look forward to working with you. Should you have any questions or require additional information you may reach me by telephone at (901) 604-7634 or by email at [mmcwilliams@corradino.com](mailto:mmcwilliams@corradino.com) or you may contact Gerald Bolden at 615-372-6972 or [gbolden@corradino.com](mailto:gbolden@corradino.com).

Sincerely,

**THE CORRADINO GROUP, INC.**



Marty McWilliams, PE, PMP  
TN Construction Services Manager



**Exhibit A - Scope of Work**  
**SR-96 Traffic Signal Improvements Project (PIN 127913.00)**  
**City of Franklin, Tennessee**  
**January 6, 2023**

**Project Understanding**

The Corradino Group (Corradino) was selected to provide the City of Franklin with CEI services related to the construction of the SR-96 Traffic Signal Improvements project (PIN 127913.00). Corradino understands that we will be serving as the City's construction representative and providing Construction Engineering and Inspection (CEI) services throughout the life of the contract to effectively monitor and oversee construction of the project as defined by the plans and specifications. All inspection and documentation will meet the CEI requirements as outlined in the TDOT Proposed Scope of Work for CEI and per Local Programs Development Office guidelines. Corradino proposes the following CEI tasks based on a construction schedule that includes 8-months of traffic signal submittal review and equipment procurement with an additional 4-months of field construction for a total construction contract time of 12-months (365 calendar days).

**Task 1 – Project Management and Administration**

Project management and administration is a continuous task that will be performed for the duration of this contract. This task includes monitoring, coordinating, facilitating, scheduling, and documenting all project task.

After receipt of the notice-to-proceed, Corradino will conduct a project kick-off meeting with City staff. This meeting will include discussions on the following topics:

- Key project staff
- Communications protocol
- Anticipated project schedule
- Invoicing
- Monthly progress meetings and reports
- Any data and information the city may need in addition to the standard TDOT requirements.

Once the project is underway, Corradino will provide monthly construction updates / reports associated to contractor's submitted pay applications. These reports / updates will be provided to the City's designated representative. Construction progress meetings will be held with City staff and the construction contractor, as needed. These progress meetings will include an update on material submittals, a material procurement status update, anticipated delivery of materials, anticipated schedules of material testing and installations, and discussion on any critical items/issues and/or potential issues identified during project development.

Corradino will prepare the agenda for all progress meetings and provide all necessary materials and handouts for discussion. At the conclusion of each meeting, Corradino will prepare meeting minutes and a cumulative list of "action items" developed for assignment to the appropriate party. These items will be distributed to the attendees and other appropriate stakeholders within five (5) business days following

the meeting. All deliverables included within this task will be provided in .pdf format.

Each month during the contract, Corradino will prepare and submit a monthly invoice and status report covering work progress.

### **Task 2 – TDOT Local Programs Reporting & Coordination**

Throughout the project, Corradino will provide continuous coordination with TDOT Local Programs Development Office (LPDO) and will provide all documentation and reporting as outlined in the TDOT LPDO Local Government Guidelines. This includes completion of all required forms to move the project through construction to project close-out.

Corradino will meet with TDOT LPDO staff to review the project status and records, address any project issues, and provide project documentation, as needed, or requested.

### **Task 3 – Construction Engineering and Inspection (CEI)**

Corradino will provide CEI services as outlined in the following sections. Based on discussions with the City, Corradino will provide an inspection team consisting of a Project Manager and full-time Senior ITS Inspector for the project. Corradino will coordinate throughout the construction phase with the City accordingly. The inspector will not be required to be on-site during periods when the contractor is inactive.

#### **A. Pre-Construction Conference**

Corradino will coordinate, prepare agenda, and conduct the Pre-Construction Conference; address and resolve all issues that arise at the meeting with appropriate offices, agencies, and divisions; and prepare and distribute minutes of the meeting.

#### **B. Project Administration**

Corradino will provide project administration and coordinate with the assigned City of Franklin representative. Prepare for and attend, when requested, any periodic or in depth inspections that may be conducted on the project related to project work, progress, or records. Prepare for, cooperate with, and assist auditors that may be assigned to review project records, payments, reports, etc. Provide ample inspectors and assistance to oversee all work being done on the contract. The project Administrator will obtain from the contractor a list of contractor's personnel that will be responsible for any occurrence that may arise on the project for the life of the project.

#### **C. Supplemental Agreements – Construction Change Orders**

If the Construction Contractor request a change to contract via a Supplemental Agreement - Change Order, Corradino will review any Supplemental Agreements/Construction Changes with required documentation; Negotiate prices for additional pay items with the contractor while adhering to the "TDOT Average Unit Price" listing when possible; Coordinate acceptance of prices with the City and TDOT; Prepare the Supplemental Agreement/Construction Change and submit to TDOT LPDO and the City for final review and processing.

#### **D. Quality Assurance, Testing for Acceptance**

Corradino will assist, coordinate, and provide materials testing in the field as defined by TDOT LPDO and specifications. Any certifications of material submitted by the contractor will be reviewed by Corradino and the City for conformity to the Plans and Specifications. A Final Materials and Tests Certification will be included in the Project Final Records submitted to the City. Corradino will coordinate with the City and the construction contractor for final

acceptance testing of the vehicle detection devices and traffic signal equipment installed by contractor. Corradino is not expected to assist in final integration of the Traffic Operations Center (TOC) software associated with this project.

**E. Progress Payments**

Corradino will document and assemble accurate quantities for Monthly Progress Payments to the Contractor from project field records, change orders, or force accounts. The quantities for payment will be referenced to field records prior to submission for payment. Test reports for requested items on progress payments will be on file prior to payment being approved. All pay quantities will be submitted to the City for review and payment. Payments for stockpiled material may be made as defined in the Standard Specifications and approved by the City. The Estimate "cut-off" will be the last day of each month. Copies of approved subcontracts as well as copies of actual DBE subcontractor's contracts should be on file prior to the first Progress Payment.

**F. Distribution of Correspondence**

Corradino will maintain a copy of all correspondence between the Consultant, contractor, subcontractors, or others concerning matters related to the project. The correspondence will be submitted with the project Final Records.

**G. Inspection of Work**

Corradino's field inspection time is estimated at 5 days per week for 6 weeks.

Corradino's inspection team ensure completion of the following tasks:

1. Provide inspection services for conformance to Plans and Specifications for all items that are being incorporated into the project. Corradino will measure and record all quantities for payment and provide daily work reports to the City, upon request.
2. Prepare an accurate daily work report consisting of:
  - Project Information
  - Date and Days charged.
  - Weather, amount of precipitation(24-HR), temperature at morning (9:00AM) and afternoon (3:00PM), cloudy, clear, etc.
  - A record of the contractors on the project
  - Their personnel (number and classification)
  - Equipment (number and type or size)
  - Equipment arriving or leaving the project, idle equipment.
  - Location and work performed by each contractor or subcontractor
  - Pay Items and quantities installed during the day.
  - Orders given the contractor
  - Events of note on the project
  - Accidents on the project and any details surrounding the accident such as police report number, fatalities, causes, time, etc. Obtain a copy of the police report for the project records whenever possible.
  - Any other details that may be important later in the project life.
  - Photos of work activities.
3. Check traffic control daily, and additionally as required. Notify the contractor of deficiencies or problems immediately. Document weekly (or as often as necessary) project traffic control on standard forms and provide to the City.
4. Inspect daily erosion control items for conformance to the plans as well as effectiveness in the field.

5. Review shop drawings and/or submittals and evaluate for contract and specification compliance.
6. Collect all material certifications (T2 Forms).
7. Participate in "Final Completion" inspection with City and TDOT representatives.

Corradino understands that the City does not expect Corradino to be on-site for the entire workday if no work is being performed.

**H. Contractor's Payrolls, Employee Interviews and Contract Compliance:**

Corradino will receive and check the contractor's payrolls for conformance to state / federal wage rates as defined in the contract. Late payrolls (two weeks late) are justification to withhold progress payment. Corradino will notify the prime contractor of late payrolls and request immediate submission. Corradino will notify the City prior to withholding payments. Corradino will conduct employee interviews and compare to the submitted payrolls for accuracy. Corradino will notify the contractor of inaccuracies and help resolve any discrepancies.

**I. Reports**

There are numerous reports, documents, etc., that must be generated in the process of contract administration. Corradino will maintain either electronic or paper copies of all reports in compliance with TDOT's Standard Operating Procedures and LPDO Guidelines.

**J. Final Records**

Corradino will submit a compilation of project records as well as all project documentation to the City. Corradino will make any corrections when/if notified and resubmit the records and a final estimate for the project at the appropriate time and submit all final forms (CC3, etc.) with the final records.

**Exhibit B – Fee Schedule**  
**SR-96 Traffic Signal Improvements Project (PIN 127913.00)**  
**City of Franklin, Tennessee**  
**January 6, 2023**

| TASK DESCRIPTION                                                                      | Resource | Principal | Project Manager | Senior ITS Inspector | TOTALS     |
|---------------------------------------------------------------------------------------|----------|-----------|-----------------|----------------------|------------|
| <b>CONSTRUCTION ENGINEERING AND INSPECTION</b>                                        |          |           |                 |                      |            |
| <b>Construction Contract 365 days (12 months); Estimated Field Inspection 7 weeks</b> |          |           |                 |                      |            |
| 1. Setup of Project Records and Filing System per TDOT LPDO                           |          |           | 24              |                      | 24         |
| 2. Pre-Construction Meeting                                                           |          |           | 8               | 5                    | 13         |
| 3. Project Management                                                                 |          | 12        | 89              | 12                   | 113        |
| 4. Daily Inspection                                                                   |          |           |                 | 395                  | 395        |
| 5. Misc. Coordination (assume 5 hrs/mo - 4 months)                                    |          |           | 20              |                      | 20         |
| 6. Close Out                                                                          |          |           | 48              |                      | 48         |
|                                                                                       |          |           |                 |                      |            |
|                                                                                       |          |           |                 |                      |            |
|                                                                                       |          |           |                 |                      |            |
| <b>Total CEI Service</b>                                                              |          | <b>12</b> | <b>189</b>      | <b>412</b>           | <b>613</b> |

**ESTIMATED LABOR COST = \$89,350**

**ESTIMATED EXPENSES = \$1,815**  
(Daily Truck Charge (\$30.25/day))

**ESTIMATED MATERIALS TESTING = \$1,000**

**ESTIMATED TOTAL COST = \$92,165**

**IRAN DIVESTMENT ACT CERTIFICATION**

By submission of a bid or proposal to the City of Franklin, the Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that neither they, nor any assignee of the resulting contract, is on the list created pursuant to T.C.A. § 12-12-106. The Bidder further certifies that it shall not utilize any subcontractor identified on the list created pursuant to T.C.A. § 12-12-106. This list is generated to identify entities ineligible to contract with the State of Tennessee or any political subdivision of the State pursuant to the Iran Divestment Act, T.C.A. §§ 12-12-101 – 113, and the current list may be found at the Tennessee Department of General Services, Central Procurement Office, website under the Public Information Library webpage at the following link:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>

This certification shall not be necessary and shall not apply to contracts valued at one thousand dollars (\$1,000.00) or less.

**CERTIFICATION**

**The Bidder certifies that, to the best of its knowledge and belief, it is not on the Iran Divestment Act list as described above.**

\_\_\_\_\_  
***Signature***

\_\_\_\_\_  
***Date***

\_\_\_\_\_  
***Printed Name***

\_\_\_\_\_  
***Title***

\_\_\_\_\_  
***Name of Firm/Company***

**NON-BOYCOTT OF ISRAEL REQUIREMENTS**

*Tennessee Code Annotated* § 12-4-119 (as enacted by Chapter 775 of the Public Acts of 2022) prohibits a public entity from entering into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in, and will not for the duration of the contract engage in, a boycott of Israel. This requirement does not apply to a contract with a total potential value of less than two hundred fifty thousand dollars (\$250,000) or to contractors with less than ten (10) employees.

**CERTIFICATION**

The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Name of Firm/Company**





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**File #: 21-04229**

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**DATE:** January 31, 2023  
**TO:** Capital Investment Committee  
**FROM:** Paul Holzen, Director of Engineering  
Jimmy Wiseman, Asst. Director of Engineering

**SUBJECT:**

Consideration Of COF Contract No. 2022-0286, With Turnberry Homes, LLC (Tavisstock Subdivision) For A Road Impact Fee Offset Agreement For An Amount Not To Exceed \$16,700

**PURPOSE:**

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning COF Contract No. 2022-0286.

**BACKGROUND/STAFF COMMENTS:**

Turnberry Homes, LLC is proposing 5 new single family lots on Clovercroft Road. As part of the site plan and final plat, the Developer is required to dedicate right-of-way for the future widening of Clovercroft Road. This agreement is to reimburse the Developer the amount of collector fees they will pay prior to building permit.

**FINANCIAL IMPACT:**

The total eligible costs of design, right-of-way acquisition, easement acquisition, permits, and construction of the above collector roadway Improvements is One Hundred Eighty Thousand Seven Hundred Thirty and No/100 Dollars (\$180,730.00) for the Development Project and the total reimbursement to the Developer is estimated to be Sixteen Thousand Seven Hundred and No/100 Dollars (\$16,700.00) . At no time shall reimbursement exceed the collector impact fees collected as part of the Development Project.

**RECOMMENDATION:**

Staff recommends that COF Contract No. 2022-0286 be recommended to the Board of Mayor and Aldermen for approval.

**ROAD IMPACT FEE REIMBURSEMENT AGREEMENT  
COF CONTRACT NO. 2022-0286**

This agreement ("Agreement") is entered into between THE CITY OF FRANKLIN, TENNESSEE ("City") and Turnberry Homes, LLC ("Developer"), on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, pursuant to Title 16, Chapter 4 of the Franklin Municipal Code ("FMC").

**WHEREAS**, the Developer has previously submitted to the Franklin Municipal Planning Commission the Tavistock Subdivision, Site Plan, COF Project #7855, for approval (the "Development Project"); and

**WHEREAS**, the City has required the Developer to design, acquire right-of-way, acquire easements, obtain permits, and construct certain roadway improvements (the "Improvements") as a requirement of the Development Project and as shown on Exhibit A; and

**WHEREAS**, the Improvements required as part of the Development Project are identified in the City's Major Thoroughfare Plan, Connect Franklin; and

**WHEREAS**, the Developer has made application to offset a portion of the costs of these improvements against any Road Impact Fees due from the Development Project.

**NOW THEREFORE**, the City and the Developer, their successors and assigns, do hereby agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to define the obligations of the parties necessary to carry out the intent of this Agreement for the provision of reimbursement of collector and arterial road impact fees pursuant to the FMC.
2. **TERM.** This Agreement shall become effective on the date it is fully executed and shall continue until the parties have fully fulfilled their obligations provided hereunder or until the agreement is terminated as provided herein. Understanding the large financial investment each party is making, this Agreement shall only be terminated for convenience upon written agreement of the parties.
3. **PROJECT.** The Developer has submitted reliable information related to the costs of construction of the following Improvements or dedication of right of way: dedication of right-of-way on Clovercroft Road for future widening.
4. **ELIGIBLE COLLECTOR ROAD IMPACT FEE REIMBURSEMENT.** The total eligible costs of design, right-of-way acquisition, easements acquisition, permits, and construction of the above collector roadway Improvements is the total reimbursement to the Developer is **Sixteen Thousand Seven Hundred and No/100 Dollars (\$16,700)**. At no time shall reimbursement exceed the collector impact fees collected as part of the Development Project
5. **APPROVAL OF CONTRACTS AND AGREEMENTS.** The City Engineer shall review and approve all professional services agreements, right-of-way and easement acquisition offers (that exceed the appraised value of the acquisition), and construction bids associated with the Improvements. The Developer shall obtain approval prior to the spending of any funding in which the Developer is seeking

reimbursement from the City. The Developer agrees that failure to obtain contract approval from the City Engineer may result in loss of City reimbursement as determined by the City Engineer.

**6. APPROVAL OF CONSTRUCTION DOCUMENTS.** Prior to starting right-of-way acquisition, easement acquisition, and construction, the Developer shall submit construction documents to the City Engineer for review and approval. The Developer agrees that failure to obtain approval from the City Engineer may result in loss of City reimbursement as determined by the City Engineer.

**7. PERMITS.** The Developer shall be solely responsible for obtaining and complying with all necessary local, state, and federal permits associated with the Improvements.

**8. ON-SITE RIGHT-OF-WAY AND EASEMENT DEDICATION.** The reimbursement value of on-site right-of-way shall be based on the fair market value of the land at the date of application for the development approval for which the condition of dedication was imposed. The value of right-of-way is hereby established as \$10.00 per SF, and all other necessary temporary slope, temporary construction, access easements, and utility easements shall be dedicated at no cost to the City.

**9. OFF-SITE RIGHT-OF-WAY AND EASEMENT ACQUISITION.**

- a. The Developer shall be responsible for obtaining all off-site right-of-way and easements associated with the off-site Improvements.
- b. At a minimum, the Developer shall offer fair market value for all right-of-way and or easements necessary as part of the Improvements. The value of right-of-way and easements shall be determined by a professional real estate appraiser or other means as approved by the City Engineer.
- c. Should negotiations fail, the City agrees to assist, to the maximum extent allowable by law, in the acquisition of the necessary off-site right-of-way and easements associated with the Improvements.

**10. Reimbursement and Final Acceptance.**

- a. The Developer may submit periodic invoices to the City during the course of design, right-of-way acquisition, easement acquisition, permitting and construction (not more frequently than every 90 days), which invoices shall be payable within 30 days after approval by the Road Impact Fee Administrator (City Engineer), subject to collected impact fees as specified within this Agreement.
- b. No reimbursement on Construction shall be allowed until all right-of-way and easements have been properly deeded to the City and/or State and recorded at the Williamson County Register of Deeds.
- c. Invoices shall include copies of approved contracts and invoices associated with the roadway Improvements, partial lien waivers for all contracts and copies of checks to show proof of payment. The Developer shall submit invoices based on the latest approved City forms as required by the Road Impact Fee Administrator (City Engineer).
- d. Prior to final reimbursement and City acceptance of off-site Improvements, the Developer shall coordinate final inspections with the City and obtain letters of acceptance from the Street Department or City Engineer.
- e. The following costs are specifically excluded from reimbursement: fiscal cost, including interest of money borrowed to finance the construction, cost for utility relocations, landscaping, turn

lanes, internal management fees and turn lanes / signal improvements that benefit solely the development and not the arterial and/or collector roadway.

**11. INDEMNIFICATION.**

- a. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Developer under this Agreement or otherwise, Developer shall indemnify and hold harmless the City, and the officers, directors, members, partners, employees, agents, consultants and subcontractors, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Improvements, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the improvements itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Developer, and any contractor and any subcontractor, and any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Improvements, or anyone for whose acts any of them may be liable.
- b. In any and all claims against City, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Developer, and contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Improvements, or anyone for whose acts any of them may be liable, the indemnification obligation under the paragraph above will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Developer, or any contractor or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**13. MISCELLANEOUS.**

- a. Binding. This Agreement shall be binding upon the parties and shall take effect from and after its ratification and signing by all parties after obtaining appropriate approval pursuant to the requirements of applicable law.
- b. Severability. The parties agree that if any part, term, or provision of this Agreement is determined to be illegal or in conflict with any law of the State of Tennessee by any court with jurisdiction, the validity of the remaining portions or provisions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- c. Specific Performance. The parties recognize that the rights afforded to each under this Agreement are unique and, accordingly, the individual parties shall, in addition to such other remedies as may be available to them in equity, have the right to enforce their respective rights hereunder by an action for injunctive relief and/or specific performance to the extent permitted by law.
- d. Cooperation. The parties agree to cooperate fully in order to successfully execute the terms and conditions of this Agreement, including obtaining all regulatory and governmental approvals required to carry out the terms of this Agreement, recognizing that the intent of each party to the other is to serve the individual interests of each party while respecting the conditions and obligations of this Agreement.

- e. Assignment. The rights and obligations of this Agreement are not assignable without prior written consent of the City.
- f. Law/Venue. This Agreement shall be exclusively governed by the laws of the State of Tennessee. In the event that any section and/or term of this Agreement, or any exhibits hereto, becomes subject to litigation, the venue for such action will be exclusively maintained in a court of competent jurisdiction sitting in Williamson County, Tennessee.
- g. Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to the subject matter hereof. This Agreement may be amended only by written instrument signed by all parties.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by an authorized person effective as of the date and year written below.

Approved by the Franklin Board of Mayor and Aldermen on \_\_\_\_\_, 20\_\_.

WITNESS our hands on the dates as indicated.

**DEVELOPER**

\_Turnberry Homes, LLC

By: [Signature]

Print Name: Nicky Wells

Title: President

STATE OF TENNESSEE )

)

COUNTY OF WILLIAMSON )

Before me, Jayne Lockhart, a Notary Public of said County and State, personally appeared Nicky Wells, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged him self to be President (or other officer authorized to execute the instrument) of Turnberry Homes, the within named bargainor, a LLC, and that Nicky Wells as such President executed the foregoing instrument for the purposes therein contained.

Witness my hand and seal on this 7th day of December, 2022.

[Signature]  
Notary Public

My Commission Expires: 32126



**CITY**

CITY OF FRANKLIN, TENNESSEE, a municipality

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

DR. KEN MOORE  
Mayor

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

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

ERIC S. STUCKEY  
City Administrator

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

STATE OF TENNESSEE )

)

COUNTY OF WILLIAMSON )

Before me, the undersigned Notary Public of said County and State, personally appeared DR. KEN MOORE and ERIC S. STUCKEY, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged themselves to be the Mayor and City Administrator, respectively, of the City of Franklin, Tennessee, the within named bargainor, a municipality, and that as such Mayor and City Administrator executed the foregoing instrument for the purposes therein contained, by signing the name of the municipality by themselves as Mayor and City Administrator.

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Approved as to form by:

\_\_\_\_\_  
William E. Squires  
Assistant City Attorney





### IRAN DIVESTMENT ACT CERTIFICATION

By submission of a bid or proposal to the City of Franklin, the Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that neither they, nor any assignee of the resulting contract, is on the list created pursuant to T.C.A. § 12-12-106. The Bidder further certifies that it shall not utilize any subcontractor identified on the list created pursuant to T.C.A. § 12-12-106. This list is generated to identify entities ineligible to contract with the State of Tennessee or any political subdivision of the State pursuant to the Iran Divestment Act, T.C.A. §§ 12-12-101 – 113, and the current list may be found at the Tennessee Department of General Services, Central Procurement Office, website under the Public Information Library webpage at the following link:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>

This certification shall not be necessary and shall not apply to contracts valued at one thousand dollars (\$1,000.00) or less.

### CERTIFICATION

The Bidder certifies that, to the best of its knowledge and belief, it is not on the Iran Divestment Act list as described above.

  
\_\_\_\_\_  
Signature

12.07.22  
\_\_\_\_\_  
Date

Nicky Wells  
\_\_\_\_\_  
Printed Name

President  
\_\_\_\_\_  
Title

Turnberry Homes, LLC  
\_\_\_\_\_  
Name of Firm/Company

**NON-BOYCOTT OF ISRAEL REQUIREMENTS**

*Tennessee Code Annotated § 12-4-119* (as enacted by Chapter 775 of the Public Acts of 2022) prohibits a public entity from entering into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in, and will not for the duration of the contract engage in, a boycott of Israel. This requirement does not apply to a contract with a total potential value of less than two hundred fifty thousand dollars (\$250,000) or to contractors with less than ten (10) employees.

**CERTIFICATION**

The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119

  
\_\_\_\_\_  
Signature

12.07.22  
\_\_\_\_\_  
Date

Nicky Wells  
\_\_\_\_\_  
Printed Name

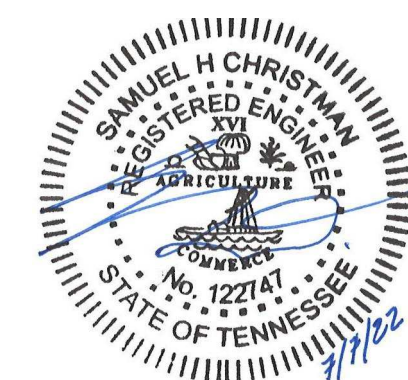
President  
\_\_\_\_\_  
Title

Turnberry Homes, LLC  
\_\_\_\_\_  
Name of Firm/Company





Nashville - Murfreesboro - Chattanooga  
ragansmith.com



**TAVISTOCK SUBDIVISION, SITE PLAN**

**FOR**

**TURNBERRY HOMES, LLC**

NINTH CIVIL DISTRICT, FRANKLIN, WILLIAMSON COUNTY, TENNESSEE

Scale: 1"=50'

Date: 07/06/2022

Approved By: SHC

Revisions:

— — —

— — —

Drawing Title:

## SITE PLAN

Drawing No.

# C1.0

Project No. \_\_\_\_\_

21-0156

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GENERAL NOTES:

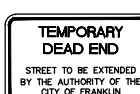
1. ALL STOP SIGNS SHALL MEASURE A MINIMUM OF 30"x30" IN ACCORDANCE WITH THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD). INSTALLATION SHALL BE IN CONFORMANCE WITH THE MOST CURRENT MUTCD, INCLUDING HEIGHT, OFF-SET, OTHER DIMENSIONAL PROPERTIES, AND REFLECTIVITY.
2. ALL SIGNS TO HAVE 3M REFLECTIVE COATING.
3. ALL MARKINGS SHALL COMPLY WITH THE CURRENT EDITION OF THE MANUAL ON UNIFORM CONTROL DEVICES, TENNESSEE D.O.T. STANDARD DRAWINGS, AND METRO NASHVILLE SPECIFICATIONS.
4. SIGNS MOUNTED IN THE CENTRAL ISLAND, SPLITTER ISLAND OR MEDIAN AT THE ROUNDABOUT ENTRY POINT SHALL BE INSTALLED WITH BREAKAWAY TYPE POST FOOTINGS — SEE TDOT STD. DWG T-S-12.
5. THE FINAL SITE PLAN SHALL DEPICT THE REQUIRED PUBLIC SIDEWALKS, ANY REQUIRED GRASS STRIP OR FRONTAGE ZONE AND THE LOCATION OF ALL EXISTING AND PROPOSED VERTICAL OBSTRUCTIONS WITHIN THE REQUIRED SIDEWALK AND GRASS STRIP OR FRONTAGE ZONE. PRIOR TO THE ISSUANCE OF USE AND OCCUPANCY PERMITS, EXISTING VERTICAL OBSTRUCTIONS SHALL BE RELOCATED OUTSIDE OF THE REQUIRED SIDEWALK. VERTICAL OBSTRUCTIONS ARE ONLY PERMITTED WITHIN THE REQUIRED GRASS STRIP OR FRONTAGE ZONE.
6. ALL STREET LIGHTS SHALL HAVE LED LIGHT SOURCE.
7. LOTS DESIGNATED WITH A "\*" DENOTE CRITICAL LOTS FOR GRADING DUE TO STEEP GRADE FROM STREET. THESE LOTS WILL REQUIRE SUBMITTAL OF A CRITICAL LOT SITE PLAN WITH THE BUILDING PERMIT SUBMITTAL.

## ROADWAY NOTES:

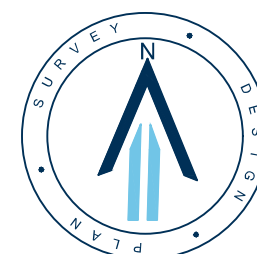
1. ROADS SHALL BE COMPLETED AND INSPECTED BEFORE A BUILDING PERMIT IS ISSUED.
2. ROADS MUST BE CONSTRUCTED TO MINIMIZE EROSION IMPACTS.
3. ROADS SHALL BE A MINIMUM 20- FEET WIDE.
4. ACCESS ROADS SHALL TERMINATE NOT LESS THAN 150- FEET FROM ANY PORTION OF A STRUCTURE.
5. TURNAROUNDS ARE REQUIRED FOR ACCESS ROADS LONGER THAN 150- FEET.
6. ROADS SHALL BE AN ALL- WEATHER SURFACE CAPABLE OF SUPPORTING 80,000- POUNDS.
7. CONSTRUCTION SHALL BE A MINIMUM OF 8- INCHES COMPACTED TYPE A GRANULAR STONE OR EQUIVELANT. INCLUDING PROVISIONS FOR STORM DRAINAGE, LIGHT AND LANE MARKINGS, DEVICES AND SIGNAGE.
8. IF A SEWER MANHOLE IS LOCATED IN THE GRAVEL AREA, THE AREA AROUND THE MANHOLE MUST BE PROTECTED TO PREVENT DAMAGING THE MANHOLE. METHODS OF PROTECTING THE MANHOLE SHALL BE APPROVED BY THE WATER DEPARTMENT AND MAY INCLUDE INSTALLING AN ASPHALT RING AROUND THE MANHOLE, PAVING THE AREA AROUND THE MANHOLE OR OTHER METHOD AS APPROVED BY THE WATER DEPARTMENT.
9. ALL STREET LIGHTS SHALL HAVE A LED LIGHT SOURCE.

| LINE TABLE |              |          | LOT AREA TABLE |           |         |
|------------|--------------|----------|----------------|-----------|---------|
| LINE       | BEARING      | DISTANCE | LOT            | SQ. FT. ± | ACRES ± |
| L1         | N82°40'21"W  | 36.81'   | 1              | 16,272    | 0.37    |
| L2         | N107°12'42"W | 42.48'   | 2              | 17,888    | 0.41    |
| L3         | N84°12'59"W  | 45.13'   | 3              | 15,225    | 0.35    |
| L4         | S84°12'59"E  | 45.73'   | 4              | 15,819    | 0.36    |
| L5         | S21°53'56"W  | 5.00'    | 5              | 21,606    | 0.50    |
| L6         | S102°1'42"E  | 28.02'   | 6              | 132,815   | 3.05    |
| L7         | N06°16'37"E  | 34.60'   | 7              | 32,670    | 0.75    |
| L8         | N75°52'28"E  | 15.12'   | 8              | 17,197    | 0.39    |

| CURVE TABLE |         |         |             |         |         |             |
|-------------|---------|---------|-------------|---------|---------|-------------|
| CURVE       | RADIUS  | LENGTH  | DELTA       | TANGENT | CHORD   | CHD BRG     |
| C1          | 9.50'   | 14.92'  | 90°00'00"   | 9.50    | 13.44'  | N55°21'42"W |
| C2          | 44.00'  | 12.36'  | 16°05'47"   | 6.22    | 12.32'  | S02°18'48"W |
| C3          | 101.00' | 132.40' | 75°06'35"   | 77.65   | 123.12' | N31°49'12"W |
| C4          | 10.00'  | 8.67'   | 49°39'24"   | 4.63    | 8.40'   | N44°33'42"W |
| C5          | 65.00'  | 148.53' | 13°05'33"   | 142.39  | 118.26' | S02°15'33"W |
| C6          | 65.00'  | 137.81' | 12°12'28"9" | 116.01  | 113.41' | S78°32'17"W |
| C7          | 10.00'  | 15.67'  | 89°47'28"   | 9.6     | 14.12'  | N85°31'12"E |
| C8          | 49.00'  | 47.22'  | 55°13°09"   | 25.63   | 45.42'  | S21°52'29"E |
| C9          | 35.00'  | 9.87'   | 16°09'51"   | 4.97    | 9.84'   | S13°49°00"W |
| C10         | 65.00'  | 36.60'  | 32°15'38"   | 18.80   | 36.12'  | S05°46'07"W |
| C11         | 9.50'   | 14.92'  | 90°00'00"   | 9.50    | 13.44'  | S34°38'18"W |

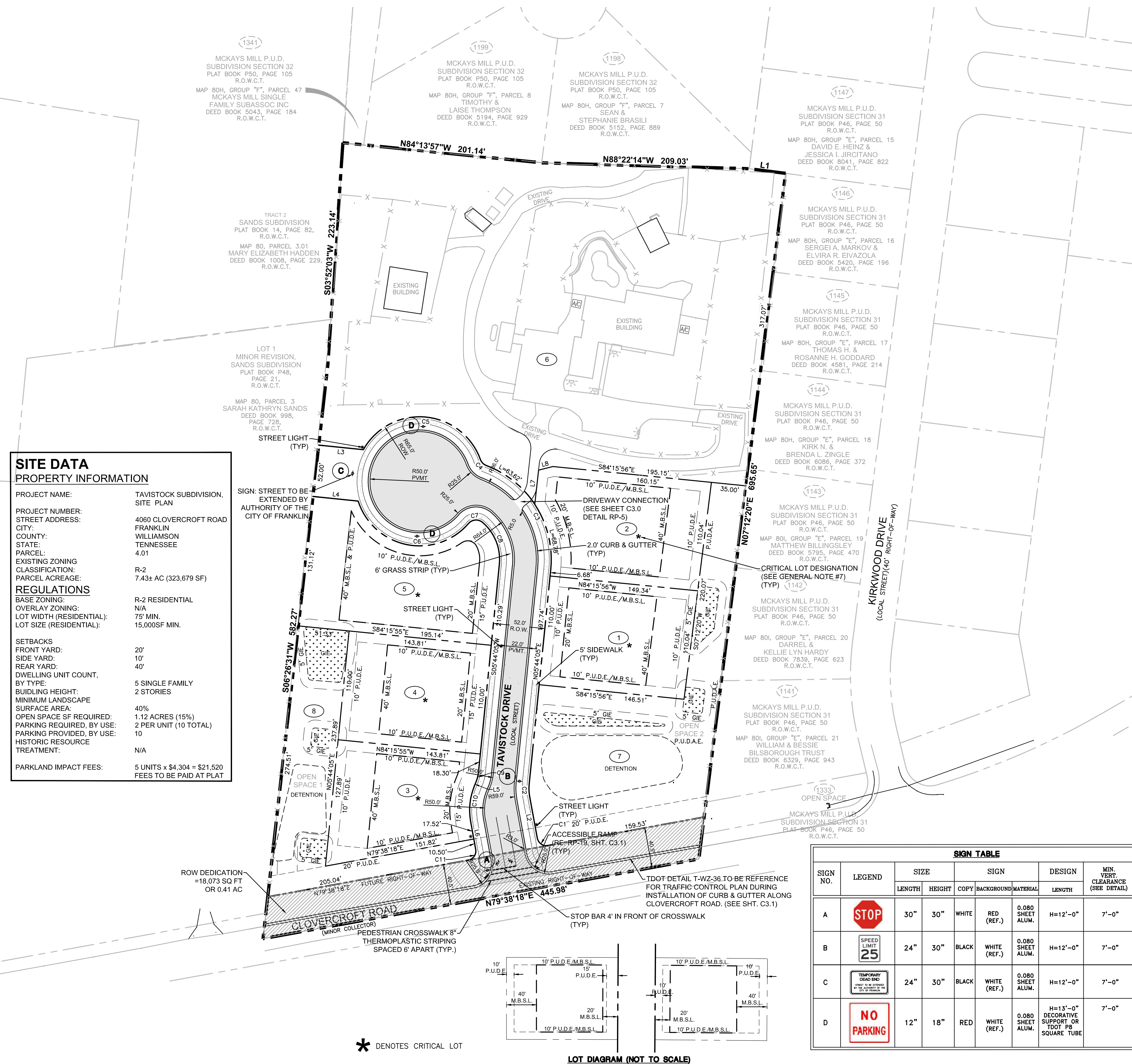
| SIGN TABLE |                                                                                       |        |        |       |              |                   |                                                           |                                   |
|------------|---------------------------------------------------------------------------------------|--------|--------|-------|--------------|-------------------|-----------------------------------------------------------|-----------------------------------|
| SIGN NO.   | LEGEND                                                                                | SIZE   |        | SIGN  |              |                   | DESIGN                                                    | MIN. VERT. CLEARANCE (SEE DETAIL) |
|            |                                                                                       | LENGTH | HEIGHT | COPY  | BACKGROUND   | MATERIAL          | LENGTH                                                    |                                   |
| A          |  | 30"    | 30"    | WHITE | RED (REF.)   | 0.080 SHEET ALUM. | H=12'-0"                                                  | 7'-0"                             |
| B          |  | 24"    | 30"    | BLACK | WHITE (REF.) | 0.080 SHEET ALUM. | H=12'-0"                                                  | 7'-0"                             |
| C          |  | 24"    | 30"    | BLACK | WHITE (REF.) | 0.080 SHEET ALUM. | H=12'-0"                                                  | 7'-0"                             |
| D          |  | 12"    | 18"    | RED   | WHITE (REF.) | 0.080 SHEET ALUM. | H=13'-0"<br>DECORATIVE SUPPORT OR<br>TODOT P8 SQUARE TUBE | 7'-0"                             |

CITY OF FRANKLIN, PROJECT #7855



Know what's below.  
Call before you dig.

K:\21-0156\1-CIVIL ENGINEERING\3-PLAN SHEETS\0156 SITE PLAN.DWG







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**File #: 21-04180**

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**DATE:** February 6, 2023  
**TO:** Capital Investment Committee  
**FROM:** Paul Holzen, Director of Engineering  
Jonathan Marston, Asst. Director of Engineering  
Adam Moser, Traffic Engineer

**SUBJECT:**

Consideration Of COF Contract No. 2022-0119, With Barge Design Solutions For Traffic Engineering On-Call Consultant Services

**PURPOSE:**

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Contract No. 2022-0119.

**BACKGROUND/STAFF COMMENTS:**

The Traffic Engineering On-Call consultants are responsible for a number of traffic engineering related tasks including third party review of development initiated traffic impact studies, traffic signal timing projects, traffic signal design projects, and other projects related to traffic engineering. The consultants were selected through a competitive Requests For Qualifications (RFQ) process, reviewed and graded by a technical review committee. The top four consultants were selected out of ten consultants that submitted for this on-call contract. This contract will be used in conjunction with Resolution 2022-82, "A Resolution For On-Call Traffic Engineering Professional Services Agreements (COF Contract No. 2022-0119, 2022-0298, 2022-0299 & 2022-0300) Authorizing The City Administrator To Execute Work Orders For The Above Contracts". This Resolution allows City staff to select an appropriate traffic engineering consultant and negotiate scope and fee for such projects, with the City Administrator approving the final task work order for such projects.

**FINANCIAL IMPACT:**

The cost to cover this task work order is provided under the Traffic Operations Center Engineering Services line item budget number in the annual budget.

**RECOMMENDATION:**

Staff recommends that COF Contract No. 2022-0119 be recommended to the Board of Mayor and Aldermen for approval.

**CITY OF FRANKLIN, TENNESSEE  
PROFESSIONAL SERVICES AGREEMENT  
COF Contract No. 2022-0119**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **BARGE DESIGN SOLUTIONS, INC** hereinafter referenced as Consultant, who mutually agree as follows:

**DECLARATIONS.** The City desires to retain the Consultant to provide engineering and related technical services in connection with the City's project hereinafter referenced as the Project. The Project is described as follows:

**On-Call Traffic Engineering Services**

1. SCOPE OF SERVICES. The Consultant shall provide engineering and related technical services for the Project in accordance with the Scope of Services ("Services") as found in Attachment A, which shall be considered as an integral part hereof.
2. The Consultant shall submit as a part of Attachment A an individual Fee Schedule and a Completion Schedule for the Project based on the detailed Scope of Services.
3. In the event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.
4. The Consultant shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A in the Not to Exceed Amount for Individual Work Orders. Individual Work Orders shall be issued by the City Engineer, approved by the City Administrator, and shall be subject to all terms of this Agreement

The Board of Mayor and Aldermen Approved this Agreement on the \_\_\_\_ Day of \_\_\_\_\_ 20\_\_.

## TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

### ARTICLE 1. SERVICES. The Consultant will:

- 1.1 Act for the City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry:
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Designate, in writing, the sole Project representative to coordinate with the City the Services to be provided, including all contact information.
- 1.5 Unless provided for in the Project Scope of Services (Attachment A), the Consultant shall perform all Services with his own forces (employees). Should sub-consultants be proposed to be used in the Project, a listing of said sub-consultants with Services to be performed shall be provided. After approval of this Agreement, no substitute for sub-consultants shall be allowed unless approved by the City.
- 1.6 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by the City at all reasonable times.

### ARTICLE 2. CITY'S RESPONSIBILITIES. The City, or its authorized representative, will:

- 2.1 Provide the Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the City.
- 2.2 Furnish right-of-entry onto the Project site for the Consultant's necessary field studies and surveys. The Consultant will endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.
- 2.3 Designate, in writing, the sole Project representative to coordinate with and direct the Consultant, including all contact information.
- 2.4 Guarantee to the Consultant that it has the legal capacity to enter into this contract and that sufficient monies are available to fund the Consultant's compensation.

### ARTICLE 3. GENERAL CONDITIONS.

- 3.1 The Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 The Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the Project acting upon written instruction issued by the Consultant.
- 3.3 Neither the City nor the Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party.
- 3.4 ALLOCATION OF RISK AND LIABILITY; GENERAL. Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this Article.



- 3.5 INDEMNIFICATION. The Consultant agrees to indemnify and hold the City harmless from and against legal liability for all claims, judgments, losses, damages, and expenses to the extent such claims, judgments, losses, damages, or expenses are caused by the Consultant's negligent act, error or omission in the performance of the Services of this Agreement. In the event claims, judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of the Consultant and the City, they shall be borne by each party in proportion to its own negligence.

3.5.1 SURVIVAL. The terms and conditions of this paragraph shall survive completion of this services agreement.

- 3.6 LIMITATIONS OF RESPONSIBILITY. The Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, Scope of Services ; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to the City or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to the Consultant in Attachment A, Scope of Services.

**ARTICLE 4. TERMINATION BY THE CITY.** The City may terminate this Agreement in accordance with the following terms and conditions:

- 4.1 TERMINATION FOR CONVENIENCE. The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the Consultant shall stop work when such termination becomes effective. The Consultant shall also terminate outstanding orders and subcontracts for the affected work. The Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Consultant has in its possession or control. When terminated for convenience, the Consultant shall be compensated as follows:

- (1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.
- (2) The City and the Consultant may agree to the compensation, if any, due to the Consultant hereunder.
- (3) Absent agreement to the amount due to the Consultant, the City shall pay the Consultant the following amounts:



- (a) Contract costs for labor, materials, equipment and other services accepted under this Agreement;
  - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the Consultant would have not profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
- (4) The total sum to be paid the Consultant under this Section shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- 4.2 TERMINATION FOR CAUSE. If the Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Agreement, then the City, in addition to any other rights it may have against the Consultant or others, may terminate the performance of the Consultant, in whole or in part at the City's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, the Consultant shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Consultant. Otherwise, the Consultant shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Agreement.

In the event the employment of the Consultant is terminated by the City for cause pursuant to this Section and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Section and the provisions of Section 4.1 shall apply.

- 4.3 TERMINATION FOR NON-APPROPRIATION. The City may also terminate this Agreement, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of such funds, and such termination shall be on the terms of Section 4.1.

- 4.4 The City's rights under this Section shall be in addition to those contained elsewhere herein or provided by law.

**ARTICLE 5. SCOPE OF SERVICES.** The Consultant shall provide the Services as described in Scope of Services attached hereto as Attachment A and incorporated herein by reference.

- 5.1 By mutual agreement, this Agreement and scope can be amended by the parties. The scope and fee for any additional tasks or services under such amendment shall be mutually negotiated and agreed to in writing prior to beginning such additional tasks or services.
- 5.2 ENVIRONMENTAL RESPONSIBILITY. Where drilling/sampling services are involved, the samples obtained from the Project site are the property of the City. Should any of these samples be recognized by the Consultant to be contaminated, the City shall remove them from the Consultant's custody and transport them to a disposal site, all in accordance with applicable government statutes, ordinances, and regulations. For all other samples, the Consultant shall retain them for a sixty (60)-day period following the submission of the drilling/sampling report unless the City directs otherwise; thereafter, the Consultant shall discard the samples in accordance with all federal, state and local laws.

**ARTICLE 6. SCHEDULE.**

- 6.1 TIME OF THE ESSENCE. The parties agree that time is of the essence with respect to the parties' performance of all provisions of the Agreement.
- 6.2 Before executing this Agreement, the Consultant shall have prepared and submitted for approval to the City a Completion Schedule for the Project with milestones for the various stages (tasks) of the Services as outlined in the Scope of Services. The Consultant shall submit and obtain the City's approval for any proposed changes to the logic, durations, sequences, or timing of tasks as approved in the Completion Schedule.
- 6.3 FORCE MAJEURE. Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.
- 6.4 Should the City request changes in the scope, extent, or character of the Project, the fee and the time of performance of the Consultant's Services as indicated in Attachment A shall be adjusted equitably.

**ARTICLE 7. USE OF DOCUMENTS, DATA.**

- 7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by the Consultant pursuant to this Agreement are



instruments of service in respect to the Project. The City shall retain an ownership and property interest therein whether or not the Project is completed.

7.1.1 USE OF DATA SYSTEMS. The City maintains all rights to data systems and data (including derivative or hidden data such as metadata) created and used by the Consultant through information supplied to the Consultant by the City.

7.1.2 DISCLOSURE OF DOCUMENTS/DATA. The City may be required to disclose documents or data under state or federal law. The City shall notify the Consultant if a request for data or documents has been made and shall give the Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. The Consultant waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, the Consultant agrees to indemnify, defend, and hold harmless the City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of the City's reliance upon the Consultant representation that materials supplied by the Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads the Consultant and the Consultant assumes control over that claim.

7.2 By execution of this Agreement, the Consultant and his sub-consultant(s) grant the City a royalty-free, perpetual, irrevocable, and assignable license to use any and all intellectual property interest the Consultant or his sub-consultant(s) possess to any drawings, details, specifications, documents, and other information created before each of their first involvement with the Project and subsequently incorporated into the Project's documents. City-furnished data that may be relied upon by the Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by the City shall be used by the Consultant only for the Project as described herein. The City's posting or publication of such documents created by the Consultant for the City shall constitute fair use and shall not constitute an infringement of the Consultant's copyright, if any.

7.3 Documents that may be relied upon by the City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by the Consultant to the City are only for convenience of the City, unless the delivery of the Project in electronic media format has been dictated in the Scope of Services attached hereto as Attachment A. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.

7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, the Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by the City.

7.5 When transferring documents in electronic media format, the Consultant makes no representations as to long term compatibility, usability, or readability, of documents

resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, the Consultant at the beginning of this Project.

- 7.6 The City may make and retain copies of Documents for information and reference in connection with use on the Project by the City, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by the City or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by the Consultant, as appropriate for the specific purpose intended, will be at the City's sole risk and without liability or legal exposure to the Consultant or to the Consultant's sub-consultants.
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 7.8 Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle the Consultant to further compensation at rates to be agreed upon by the City and the Consultant.

#### **ARTICLE 8. INSURANCE.**

- 8.1 During the performance of the Services under this Agreement, the Consultant shall maintain the following minimum insurance:
  - a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
  - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
  - c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
  - d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 The Consultant shall add the City as an additional insured on all policies unless otherwise prohibited.
- 8.3 The Consultant shall, upon execution of this Agreement, furnish the City with certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty (30) days' written notice to the City.
- 8.4 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. The City agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as the City deems adequate to indemnify the City, the Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

#### **ARTICLE 9. PAYMENT.**

- 9.1 The City will pay the Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope of Services. The Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. The City shall give prompt written notice of any disputed amount and shall pay the remaining amount.



#### **ARTICLE 10. MISCELLANEOUS PROVISIONS**

- 10.1 EQUAL EMPLOYMENT OPPORTUNITY. In connection with this Agreement and the Project, the City and the Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. The City and the Consultant will take affirmative action to ensure that the contractor used for the Project does not discriminate against any employee and employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.1.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.2 TITLE VI – CIVIL RIGHTS ACT OF 1964. The City and the Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.
- 10.2.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.3 NO THIRD-PARTY RIGHTS CREATED. The City and the Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners; to the other party to this Agreement and to their successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement. The Services provided for in this Agreement are for the sole use and benefit of the City and the Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.
- 10.4 WARRANTIES/LIMITATION OF LIABILITY/WAIVER. The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by the Consultant to limit its liability shall be void and unenforceable.

#### **ARTICLE 11. EXTENT OF AGREEMENT:**

- 11.1 APPLICABLE LAW/CHOICE OF FORUM AND VENUE. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.
- 11.2 ENTIRE AGREEMENT. This Agreement, including these terms and conditions, represent the entire Agreement between the City and the Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by the City and the Consultant.

**ARTICLE 12. DISPUTE RESOLUTION, BREACH.**

- 12.1 If a dispute should arise relating to the performance of or payment for the Services under this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to this Agreement. No arbitration or mediation shall be binding.
- 12.2 BREACH. Upon deliberate breach of the Agreement by either party, the non-breaching party shall be entitled to terminate the Agreement with notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

**ARTICLE 13. SURVIVAL.**

The provisions contained in this Professional Services Agreement shall survive the completion of or any termination of the Agreement, contract or other document to which it may accompany or incorporate by reference or which subsequently may be modified, unless expressly excepted from this Article upon consent of both parties.

**THE CITY OF FRANKLIN, TENNESSEE:**

\_\_\_\_\_  
(Signature)

Name: Dr. Ken Moore

Title: Mayor

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

**BARGE DESIGN SOLUTIONS, INC:**

\_\_\_\_\_  
(Signature)

Name: Jonathan D. Haycraft

Title: Sr. Vice President

Date: 1/13/2023

**Attest:**

\_\_\_\_\_  
(Signature)

Eric S. Stuckey  
City Administrator

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

**Approved as to Form:**

\_\_\_\_\_  
William E. Squires, Assistant City Attorney



**ATTACHMENT A**  
**Scope of Work**  
**On-Call Traffic Engineering**  
**Services City of Franklin,**  
**Tennessee**

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Barge Design Solutions, Inc (Consultant) is pleased to provide this proposal for On-Call Traffic Engineering Services to the City of Franklin, TN (City). It is anticipated that this contract will be in effect for a minimum three (3)-year period, with option to extend annually for a maximum of five (5) years. No minimum or maximum contract schedule is guaranteed. The Consultant understands that the City reserves the right to cancel and readvertise for these services at any time.

**I. TRAFFIC ENGINEERING SERVICES – TIA PREPARATION OR REVIEW**

*BACKGROUND*

The City of Franklin Zoning Ordinance provides the requirements for Transportation Impact Analyses (TIA) for development. Therefore, the City has a need for peer review OR preparation of TIAs in conjunction with the Planning/Engineering Department staff review of development applications. Such TIAs may be prepared by the developer requiring peer review from the City Traffic Engineering Consultant under this contract, also known as 3<sup>rd</sup> party review of the TIA. For 3<sup>rd</sup> party peer review, the Consultant shall agree to enter into an agreement with the developer with any fee paid directly from the developer to the Consultant prior to Consultant TIA review, and only after all parties have a signed TIA Memorandum of Understanding (MOU) using the City's standard TIA MOU form. Prior to TIA review, the City shall contact the Consultant to verify participation and availability for 3<sup>rd</sup> party review of the TIA, including participation in a TIA scoping meeting.

In rare cases, larger developments may require the Consultant to develop and prepare the TIA for the developer, as requested by the City. In this case, the Consultant will prepare the full TIA after a signed TIA MOU has been issued, and after negotiation of fee with the developer. The developer will pay the Consultant directly for this work.

*PROJECT MANAGEMENT AND COORDINATION*

The Consultant will manage each TIA review or TIA preparation project for the City of Franklin following all applicable City of Franklin development review processes and standards. At the beginning of the project, the City of Franklin Engineering Staff will hold a scoping meeting with the Consultant and developer to initiate the project and formulate a clear understanding of the project requirements. This meeting will include discussion of the project scope, schedule, communication protocol, and team organization.

The Schedule associated with task 1-3 below shall be based on the City's normal development review process.

#### *TASK 1: INITIAL COORDINATION AND GUIDANCE OF DEVELOPER TIAS*

Development applications, with a significant traffic impact, require a detailed TIA in order to identify needed transportation improvements. Such improvements will need to integrate with the City of Franklin Comprehensive Transportation Network Plan (CTNP), as well as other studies such as the Cool Springs Transportation Study (CSTS) and Goose Creek Coordinated Study. This includes knowledge of multi-modal activities occurring on the transportation network in the development area. The Consultant will have a thorough knowledge of the CTNP, City TIA Guidelines as well as other background or ongoing TIAs that relate to the development proposal. This knowledge will include the scope and schedule of City Capital Improvement Projects or other developer and government agency projects for transportation within the development area. This inventory of data gathering is to facilitate the initial scoping meeting with the developer in accordance with the Zoning Ordinance and TIA Guidelines. The Consultant will attend the initial scoping meeting with the developer and provide available pertinent data as well as give general guidance on scoping meeting items, as defined in the TIA Guidelines.

The developer will submit a Memorandum of Understanding (MOU) to the Consultant, and City staff as requested, based on input received at the initial meeting. The Consultant will answer any questions from the developer during the TIA's formulation of the MOU, and clear final review approval of the MOU with the City Engineering Staff before authorizing the developer to proceed. The Consultant shall also answer any questions from the developer in the process of performing the study.

#### *TASK 2: DETAILED REVIEW OF SUBMITTED TIAs*

The Consultant shall perform a detailed investigation of the submitted TIA. For reference, the final version of the TIA is needed prior to the second submittal in the Design Review Team cycle. This TIA review includes the checking of the basic study assumptions, the inventory data applied, the directional distributions to be used, the trip generation calculations, the technical analyses, and the conclusions and recommendations. The Consultant shall clear with the Engineering staff any corrections and adjustments that would be needed prior to relaying comments on the submitted TIA to the developer. This communication between the Consultant and the City Engineering Staff may take the form of telephone call, e-mail and/or written memorandum.

The Consultant will investigate the recommended TIA improvements in the context of other improvements proposed or planned by government agencies and/or area developments. The Consultant will distinguish between needed on-site versus off-site improvements. The Consultant will make comment on right-of-way constraints and requirements, sight distance issues, ITS elements and multi-modal accommodations as well as travel lanes and traffic controls. Where new turn lane and/or traffic signals are proposed, the consultant will review warrant analysis submitted by the developer for these improvements according to established methods and ensure compliance with the City of Franklin Street Standards and Specifications. In the case of a re-submittal of a TIA that needed revision, the Consultant shall again clear with City Engineering staff the final version before relaying acceptance of the revised TIA to the developer.



### *TASK 3: ESTABLISHMENT OF TIA RECOMMENDATIONS*

The Consultant shall prepare a comprehensive transportation recommendation memorandum for the development's staff report, to include developer obligations for each specific improvement with the associated development stage requirement for completion. The consultant shall provide this memorandum to City Engineering staff for placing the requirements into the staff report, in time for the publication of the staff report for its upcoming FMPC meeting.

When a development with a TIA component is on the agenda for an FMPC and/or BOMA meeting, the Consultant may be required to attend with or on behalf of the Engineering Department staff. The Consultant shall answer any questions of the legislators and applicants and participate in the discussion on the transportation issues as needed.

### *FEE FOR SERVICE*

The Consultant shall negotiate with the developer directly for all fees and tasks associated with this work. The City shall not be invoiced for any of this work.

## **II. GENERAL ON-CALL TRAFFIC ENGINEERING SERVICES**

As determined by City staff, Work Orders shall be mutually agreed upon and the Consultant will help with general traffic engineering services associated with a variety of on-call projects to include, but not be limited to:

- Signal Design
- ITS Design
- Signal Timing
- Warrant Investigations for Signals and Turn Lanes.
- Roadway Design
- Safety Studies
- Transportation Planning and Modeling
- Traffic Data Collection
- Construction Engineering and Inspection

### **Work Order Request Procedure**

- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
- B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
  - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
  - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on the contract anniversary date, based upon the contract

execution date, for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;

- c. An explanation of how the cost was determined; and
  - d. A schedule for completion of the task, including a completion date.
- C. The City Engineer shall issue an approved and signed Work Order, including the Task Proposal as an attachment, in writing prior to any work being completed.
- D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
- E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.



|                  |
|------------------|
| <b>EXHIBIT B</b> |
|------------------|

**SCHEDULE OF  
STANDARD CHARGES (October 26, 2022)**

**City of Franklin Traffic Engineering On-Call**

| <b>Labor Category</b>        | <b>Billing Rate</b> |
|------------------------------|---------------------|
| Officer                      | \$ 295.00           |
| Project Director             | \$ 285.00           |
| Senior Project Manager       | \$ 240.00           |
| Project Manager              | \$ 175.10           |
| Sr ITS Traffic Engineer      | \$ 231.75           |
| Sr Traffic Engineer          | \$ 185.40           |
| Jr ITS Traffic Engineer      | \$ 144.20           |
| Jr Traffic Engineer          | \$ 131.84           |
| Sr Traffic Designer          | \$ 174.07           |
| Jr Traffic Designer          | \$ 113.30           |
| Sr Civil Engineer            | \$ 174.07           |
| Jr Civil Engineer            | \$ 135.96           |
| Sr Planner                   | \$ 200.85           |
| Jr Planner                   | \$ 144.20           |
| Principal Geomatics Engineer | \$ 257.50           |
| Sr Geomatics Professional    | \$ 226.60           |
| Jr Geomatics Professional    | \$ 133.90           |
| Sr Surveyor                  | \$ 149.35           |





| Labor Category                       | Billing Rate |
|--------------------------------------|--------------|
| Jr Surveyor                          | \$ 103.00    |
| Sr GIS/Asset Management Professional | \$ 247.20    |
| Jr GIS/Asset Management Professional | \$ 206.00    |
| Information Management Professional  | \$ 108.15    |
| Drone Pilot                          | \$ 159.65    |
| Daily 3D Scanner                     | \$ 103.00    |
| Senior Landscape Architect           | \$ 187.46    |
| Landscape Architect                  | \$ 157.59    |
| Research Specialist                  | \$ 123.60    |
| ADA Roadway Engineer                 | \$ 144.20    |
| Permitting Specialist                | \$ 108.15    |
| Sr Environmental Professional        | \$ 175.10    |
| Jr Environmental Professional        | \$ 122.57    |
| Sr Roadway Engineer                  | \$ 180.25    |
| Sr Bridge Engineer                   | \$ 184.37    |
| Sr Communications Specialist         | \$ 144.20    |
| Jr Communications Specialists        | \$ 103.00    |
| Sr CEI Professional                  | \$ 175.10    |
| Jr CEI Professional                  | \$ 113.30    |
| CADD Technician                      | \$ 113.30    |
| Clerical/Admin                       | \$ 82.40     |

Rates are valid for one year from date contract is signed. An annual escalation of up to 3% may be applied to the contract rates on a yearly basis.

### IRAN DIVESTMENT ACT CERTIFICATION

By submission of a bid or proposal to the City of Franklin, the Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that neither they, nor any assignee of the resulting contract, is on the list created pursuant to T.C.A. § 12-12-106. The Bidder further certifies that it shall not utilize any subcontractor identified on the list created pursuant to T.C.A. § 12-12-106. This list is generated to identify entities ineligible to contract with the State of Tennessee or any political subdivision of the State pursuant to the Iran Divestment Act, T.C.A. §§ 12-12-101 – 113, and the current list may be found at the Tennessee Department of General Services, Central Procurement Office, website under the Public Information Library webpage at the following link:

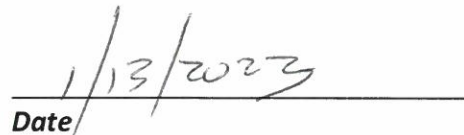
<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>

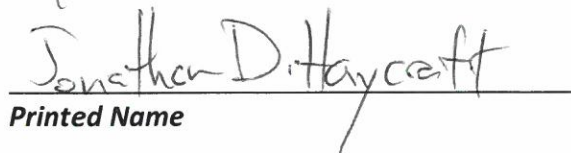
This certification shall not be necessary and shall not apply to contracts valued at one thousand dollars (\$1,000.00) or less.

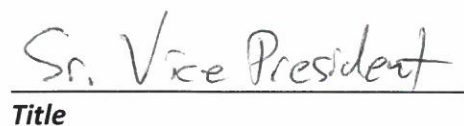
### CERTIFICATION

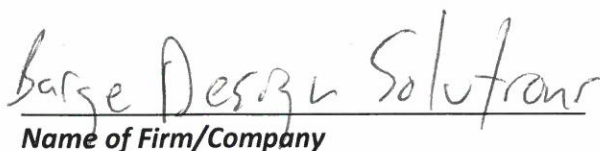
The Bidder certifies that, to the best of its knowledge and belief, it is not on the Iran Divestment Act list as described above.

  
**Signature**

  
**Date**

  
**Printed Name**

  
**Title**

  
**Name of Firm/Company**

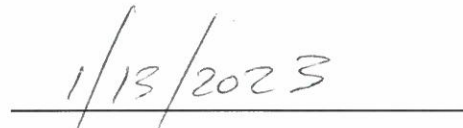
**NON-BOYCOTT OF ISRAEL REQUIREMENTS**

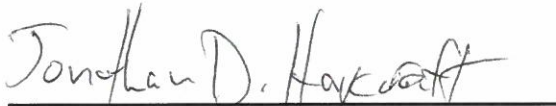
*Tennessee Code Annotated § 12-4-119* (as enacted by Chapter 775 of the Public Acts of 2022) prohibits a public entity from entering into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in, and will not for the duration of the contract engage in, a boycott of Israel. This requirement does not apply to a contract with a total potential value of less than two hundred fifty thousand dollars (\$250,000) or to contractors with less than ten (10) employees.

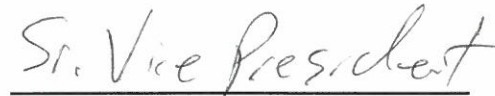
**CERTIFICATION**

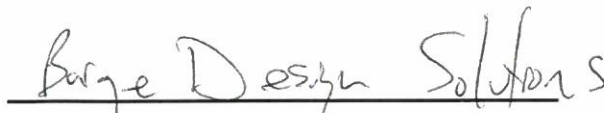
The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119

  
**Signature**

  
**Date**

  
**Printed Name**

  
**Title**

  
**Name of Firm/Company**



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**File #: 21-04199**

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**DATE:** February 6, 2023  
**TO:** Capital Investment Committee  
**FROM:** Paul Holzen, Director of Engineering  
Adam Moser, Traffic Engineer

**SUBJECT:**

Consideration Of COF Contract No. 2022-0298, With Corradino Group For Traffic Engineering On-Call Consultant Services

**PURPOSE:**

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Contract No. 2022-0289.

**BACKGROUND/STAFF COMMENTS:**

The Traffic Engineering On-Call consultants are responsible for a number of traffic engineering related tasks including third party review of development initiated traffic impact studies, traffic signal timing projects, traffic signal design projects, and other projects related to traffic engineering. The consultants were selected through a competitive Requests For Qualifications (RFQ) process, reviewed and graded by a technical review committee. The top four consultants were selected out of ten consultants that submitted for this on-call contract. This contract will be used in conjunction with Resolution 2022-82, "A Resolution For On-Call Traffic Engineering Professional Services Agreements (COF Contract No. 2022-0119, 2022-0298, 2022-0299 & 2022-0300) Authorizing The City Administrator To Execute Work Orders For The Above Contracts". This Resolution allows City staff to select an appropriate traffic engineering consultant and negotiate scope and fee for such projects, with the City Administrator approving the final task work order for such projects.

**FINANCIAL IMPACT:**

The cost to cover this task work order is provided under the Traffic Operations Center Engineering Services line item budget number in the annual budget.

**RECOMMENDATION:**

Staff recommends that COF Contract No. 2022-0298 be recommended to the Board of Mayor and Aldermen for approval.

**CITY OF FRANKLIN, TENNESSEE  
PROFESSIONAL SERVICES AGREEMENT  
COF Contract No. 2022-0298**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **THE CORRADINO GROUP** hereinafter referenced as Consultant, who mutually agree as follows:

**DECLARATIONS.** The City desires to retain the Consultant to provide engineering and related technical services in connection with the City's project hereinafter referenced as the Project. The Project is described as follows:

**On-Call Traffic Engineering Services**

1. SCOPE OF SERVICES. The Consultant shall provide engineering and related technical services for the Project in accordance with the Scope of Services ("Services") as found in Attachment A, which shall be considered as an integral part hereof.
2. The Consultant shall submit as a part of Attachment A an individual Fee Schedule and a Completion Schedule for the Project based on the detailed Scope of Services.
3. In the event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.
4. The Consultant shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A in the Not to Exceed Amount for Individual Work Orders. Individual Work Orders shall be issued by the City Engineer, approved by the City Administrator, and shall be subject to all terms of this Agreement

The Board of Mayor and Aldermen Approved this Agreement on the \_\_\_\_ Day of  
\_\_\_\_\_, 20\_\_\_\_.



## **TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES**

### **ARTICLE 1. SERVICES.** The Consultant will:

- 1.1 Act for the City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry;
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Designate, in writing, the sole Project representative to coordinate with the City the Services to be provided, including all contact information.
- 1.5 Unless provided for in the Project Scope of Services (Attachment A), the Consultant shall perform all Services with his own forces (employees). Should sub-consultants be proposed to be used in the Project, a listing of said sub-consultants with Services to be performed shall be provided. After approval of this Agreement, no substitute for sub-consultants shall be allowed unless approved by the City.
- 1.6 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by the City at all reasonable times.

### **ARTICLE 2. CITY'S RESPONSIBILITIES.** The City, or its authorized representative, will:

- 2.1 Provide the Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the City.
- 2.2 Furnish right-of-entry onto the Project site for the Consultant's necessary field studies and surveys. The Consultant will endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.
- 2.3 Designate, in writing, the sole Project representative to coordinate with and direct the Consultant, including all contact information.
- 2.4 Guarantee to the Consultant that it has the legal capacity to enter into this contract and that sufficient monies are available to fund the Consultant's compensation.

### **ARTICLE 3. GENERAL CONDITIONS.**

- 3.1 The Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 The Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the Project acting upon written instruction issued by the Consultant.
- 3.3 Neither the City nor the Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party.
- 3.4 ALLOCATION OF RISK AND LIABILITY; GENERAL. Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this Article.

3.5 INDEMNIFICATION. The Consultant agrees to indemnify and hold the City harmless from and against legal liability for all claims, judgments, losses, damages, and expenses to the extent such claims, judgments, losses, damages, or expenses are caused by the Consultant's negligent act, error or omission in the performance of the Services of this Agreement. In the event claims, judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of the Consultant and the City, they shall be borne by each party in proportion to its own negligence.

3.5.1 SURVIVAL. The terms and conditions of this paragraph shall survive completion of this services agreement.

3.6 LIMITATIONS OF RESPONSIBILITY. The Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, Scope of Services ; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to the City or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to the Consultant in Attachment A, Scope of Services.

**ARTICLE 4. TERMINATION BY THE CITY.** The City may terminate this Agreement in accordance with the following terms and conditions:

4.1 TERMINATION FOR CONVENIENCE. The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the Consultant shall stop work when such termination becomes effective. The Consultant shall also terminate outstanding orders and subcontracts for the affected work. The Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Consultant has in its possession or control. When terminated for convenience, the Consultant shall be compensated as follows:

- (1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.
- (2) The City and the Consultant may agree to the compensation, if any, due to the Consultant hereunder.
- (3) Absent agreement to the amount due to the Consultant, the City shall pay the Consultant the following amounts:

- (a) Contract costs for labor, materials, equipment and other services accepted under this Agreement;
- (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the Consultant would have not profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
- (4) The total sum to be paid the Consultant under this Section shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

4.2 TERMINATION FOR CAUSE. If the Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Agreement, then the City, in addition to any other rights it may have against the Consultant or others, may terminate the performance of the Consultant, in whole or in part at the City's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, the Consultant shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Consultant. Otherwise, the Consultant shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Agreement.

In the event the employment of the Consultant is terminated by the City for cause pursuant to this Section and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Section and the provisions of Section 4.1 shall apply.

4.3 TERMINATION FOR NON-APPROPRIATION. The City may also terminate this Agreement, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of such funds, and such termination shall be on the terms of Section 4.1.

- 4.4 The City's rights under this Section shall be in addition to those contained elsewhere herein or provided by law.

**ARTICLE 5. SCOPE OF SERVICES.** The Consultant shall provide the Services as described in Scope of Services attached hereto as Attachment A and incorporated herein by reference.

- 5.1 By mutual agreement, this Agreement and scope can be amended by the parties. The scope and fee for any additional tasks or services under such amendment shall be mutually negotiated and agreed to in writing prior to beginning such additional tasks or services.
- 5.2 ENVIRONMENTAL RESPONSIBILITY. Where drilling/sampling services are involved, the samples obtained from the Project site are the property of the City. Should any of these samples be recognized by the Consultant to be contaminated, the City shall remove them from the Consultant's custody and transport them to a disposal site, all in accordance with applicable government statutes, ordinances, and regulations. For all other samples, the Consultant shall retain them for a sixty (60)-day period following the submission of the drilling/sampling report unless the City directs otherwise; thereafter, the Consultant shall discard the samples in accordance with all federal, state and local laws.

**ARTICLE 6. SCHEDULE.**

- 6.1 TIME OF THE ESSENCE. The parties agree that time is of the essence with respect to the parties' performance of all provisions of the Agreement.
- 6.2 Before executing this Agreement, the Consultant shall have prepared and submitted for approval to the City a Completion Schedule for the Project with milestones for the various stages (tasks) of the Services as outlined in the Scope of Services. The Consultant shall submit and obtain the City's approval for any proposed changes to the logic, durations, sequences, or timing of tasks as approved in the Completion Schedule.
- 6.3 FORCE MAJEURE. Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.
- 6.4 Should the City request changes in the scope, extent, or character of the Project, the fee and the time of performance of the Consultant's Services as indicated in Attachment A shall be adjusted equitably.

**ARTICLE 7. USE OF DOCUMENTS, DATA.**

- 7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by the Consultant pursuant to this Agreement are

instruments of service in respect to the Project. The City shall retain an ownership and property interest therein whether or not the Project is completed.

7.1.1 USE OF DATA SYSTEMS. The City maintains all rights to data systems and data (including derivative or hidden data such as metadata) created and used by the Consultant through information supplied to the Consultant by the City.

7.1.2 DISCLOSURE OF DOCUMENTS/DATA. The City may be required to disclose documents or data under state or federal law. The City shall notify the Consultant if a request for data or documents has been made and shall give the Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. The Consultant waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, the Consultant agrees to indemnify, defend, and hold harmless the City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of the City's reliance upon the Consultant representation that materials supplied by the Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads the Consultant and the Consultant assumes control over that claim.

- 7.2 By execution of this Agreement, the Consultant and his sub-consultant(s) grant the City a royalty-free, perpetual, irrevocable, and assignable license to use any and all intellectual property interest the Consultant or his sub-consultant(s) possess to any drawings, details, specifications, documents, and other information created before each of their first involvement with the Project and subsequently incorporated into the Project's documents. City-furnished data that may be relied upon by the Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by the City shall be used by the Consultant only for the Project as described herein. The City's posting or publication of such documents created by the Consultant for the City shall constitute fair use and shall not constitute an infringement of the Consultant's copyright, if any.
- 7.3 Documents that may be relied upon by the City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by the Consultant to the City are only for convenience of the City, unless the delivery of the Project in electronic media format has been dictated in the Scope of Services attached hereto as Attachment A. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.
- 7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, the Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by the City.
- 7.5 When transferring documents in electronic media format, the Consultant makes no representations as to long term compatibility, usability, or readability, of documents



resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, the Consultant at the beginning of this Project.

- 7.6 The City may make and retain copies of Documents for information and reference in connection with use on the Project by the City, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by the City or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by the Consultant, as appropriate for the specific purpose intended, will be at the City's sole risk and without liability or legal exposure to the Consultant or to the Consultant's sub-consultants.
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 7.8 Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle the Consultant to further compensation at rates to be agreed upon by the City and the Consultant.

#### **ARTICLE 8. INSURANCE.**

- 8.1 During the performance of the Services under this Agreement, the Consultant shall maintain the following minimum insurance:
  - a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
  - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
  - c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
  - d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 The Consultant shall add the City as an additional insured on all policies unless otherwise prohibited.
- 8.3 The Consultant shall, upon execution of this Agreement, furnish the City with certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty (30) days' written notice to the City.
- 8.4 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. The City agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as the City deems adequate to indemnify the City, the Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

#### **ARTICLE 9. PAYMENT.**

- 9.1 The City will pay the Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope of Services. The Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. The City shall give prompt written notice of any disputed amount and shall pay the remaining amount.

#### **ARTICLE 10. MISCELLANEOUS PROVISIONS**

- 10.1 EQUAL EMPLOYMENT OPPORTUNITY. In connection with this Agreement and the Project, the City and the Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. The City and the Consultant will take affirmative action to ensure that the contractor used for the Project does not discriminate against any employee and employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.1.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.2 TITLE VI – CIVIL RIGHTS ACT OF 1964. The City and the Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.
- 10.2.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.3 NO THIRD-PARTY RIGHTS CREATED. The City and the Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to their successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement. The Services provided for in this Agreement are for the sole use and benefit of the City and the Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.
- 10.4 WARRANTIES/LIMITATION OF LIABILITY/WAIVER. The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by the Consultant to limit its liability shall be void and unenforceable.

#### **ARTICLE 11. EXTENT OF AGREEMENT:**

- 11.1 APPLICABLE LAW/CHOICE OF FORUM AND VENUE. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.
- 11.2 ENTIRE AGREEMENT. This Agreement, including these terms and conditions, represent the entire Agreement between the City and the Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by the City and the Consultant.

**ARTICLE 12. DISPUTE RESOLUTION, BREACH.**

12.1 If a dispute should arise relating to the performance of or payment for the Services under this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to this Agreement. No arbitration or mediation shall be binding.

12.2 BREACH. Upon deliberate breach of the Agreement by either party, the non-breaching party shall be entitled to terminate the Agreement with notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

**ARTICLE 13. SURVIVAL.**

The provisions contained in this Professional Services Agreement shall survive the completion of or any termination of the Agreement, contract or other document to which it may accompany or incorporate by reference or which subsequently may be modified, unless expressly excepted from this Article upon consent of both parties.

**THE CITY OF FRANKLIN, TENNESSEE:**

\_\_\_\_\_  
(Signature)

Name: Dr. Ken Moore

Title: Mayor

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

**THE CORRADINO GROUP:**

Gerald Bolden  
(Signature)

Name: GERALD BOLDEN

Title: VICE PRESIDENT

Date: 1/12/23

**Attest:**

\_\_\_\_\_  
(Signature)

Eric S. Stuckey  
City Administrator

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

**Approved as to Form:**

\_\_\_\_\_  
William E. Squires, Assistant City Attorney

**ATTACHMENT A**  
**Scope of Work**  
**On-Call Traffic Engineering**  
**Services City of Franklin,**  
**Tennessee**

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The Corradino Group (Consultant) is pleased to provide this proposal for On-Call Traffic Engineering Services to the City of Franklin, TN (City). It is anticipated that this contract will be in effect for a minimum three (3)-year period, with option to extend annually for a maximum of five (5) years. No minimum or maximum contract schedule is guaranteed. The Consultant understands that the City reserves the right to cancel and readvertise for these services at any time.

**I. TRAFFIC ENGINEERING SERVICES – TIA PREPARATION OR REVIEW**

*BACKGROUND*

The City of Franklin Zoning Ordinance provides the requirements for Transportation Impact Analyses (TIA) for development. Therefore, the City has a need for peer review OR preparation of TIAs in conjunction with the Planning/Engineering Department staff review of development applications. Such TIAs may be prepared by the developer requiring peer review from the City Traffic Engineering Consultant under this contract, also known as 3<sup>rd</sup> party review of the TIA. For 3<sup>rd</sup> party peer review, the Consultant shall agree to enter into an agreement with the developer with any fee paid directly from the developer to the Consultant prior to Consultant TIA review, and only after all parties have a signed TIA Memorandum of Understanding (MOU) using the City's standard TIA MOU form. Prior to TIA review, the City shall contact the Consultant to verify participation and availability for 3<sup>rd</sup> party review of the TIA, including participation in a TIA scoping meeting.

In rare cases, larger developments may require the Consultant to develop and prepare the TIA for the developer, as requested by the City. In this case, the Consultant will prepare the full TIA after a signed TIA MOU has been issued, and after negotiation of fee with the developer. The developer will pay the Consultant directly for this work.

*PROJECT MANAGEMENT AND COORDINATION*

The Consultant will manage each TIA review or TIA preparation project for the City of Franklin following all applicable City of Franklin development review processes and standards. At the beginning of the project, the City of Franklin Engineering Staff will hold a scoping meeting with the Consultant and developer to initiate the project and formulate a clear understanding of the project requirements. This meeting will include discussion of the project scope, schedule, communication protocol, and team organization.

The Schedule associated with task 1-3 below shall be based on the City's normal development review process.

#### *TASK 1: INITIAL COORDINATION AND GUIDANCE OF DEVELOPER TIAS*

Development applications, with a significant traffic impact, require a detailed TIA in order to identify needed transportation improvements. Such improvements will need to integrate with the City of Franklin Comprehensive Transportation Network Plan (CTNP), as well as other studies such as the Cool Springs Transportation Study (CSTS) and Goose Creek Coordinated Study. This includes knowledge of multi-modal activities occurring on the transportation network in the development area. The Consultant will have a thorough knowledge of the CTNP, City TIA Guidelines as well as other background or ongoing TIAs that relate to the development proposal. This knowledge will include the scope and schedule of City Capital Improvement Projects or other developer and government agency projects for transportation within the development area. This inventory of data gathering is to facilitate the initial scoping meeting with the developer in accordance with the Zoning Ordinance and TIA Guidelines. The Consultant will attend the initial scoping meeting with the developer and provide available pertinent data as well as give general guidance on scoping meeting items, as defined in the TIA Guidelines.

The developer will submit a Memorandum of Understanding (MOU) to the Consultant, and City staff as requested, based on input received at the initial meeting. The Consultant will answer any questions from the developer during the TIA's formulation of the MOU, and clear final review approval of the MOU with the City Engineering Staff before authorizing the developer to proceed. The Consultant shall also answer any questions from the developer in the process of performing the study.

#### *TASK 2: DETAILED REVIEW OF SUBMITTED TIAs*

The Consultant shall perform a detailed investigation of the submitted TIA. For reference, the final version of the TIA is needed prior to the second submittal in the Design Review Team cycle. This TIA review includes the checking of the basic study assumptions, the inventory data applied, the directional distributions to be used, the trip generation calculations, the technical analyses, and the conclusions and recommendations. The Consultant shall clear with the Engineering staff any corrections and adjustments that would be needed prior to relaying comments on the submitted TIA to the developer. This communication between the Consultant and the City Engineering Staff may take the form of telephone call, e-mail and/or written memorandum.

The Consultant will investigate the recommended TIA improvements in the context of other improvements proposed or planned by government agencies and/or area developments. The Consultant will distinguish between needed on-site versus off-site improvements. The Consultant will make comment on right-of-way constraints and requirements, sight distance issues, ITS elements and multi-modal accommodations as well as travel lanes and traffic controls. Where new turn lane and/or traffic signals are proposed, the consultant will review warrant analysis submitted by the developer for these improvements according to established methods and ensure compliance with the City of Franklin Street Standards and Specifications. In the case of a re-submittal of a TIA that needed revision, the Consultant shall again clear with City Engineering staff the final version before relaying acceptance of the revised TIA to the developer.



### *TASK 3: ESTABLISHMENT OF TIA RECOMMENDATIONS*

The Consultant shall prepare a comprehensive transportation recommendation memorandum for the development's staff report, to include developer obligations for each specific improvement with the associated development stage requirement for completion. The consultant shall provide this memorandum to City Engineering staff for placing the requirements into the staff report, in time for the publication of the staff report for its upcoming FMPC meeting.

When a development with a TIA component is on the agenda for an FMPC and/or BOMA meeting, the Consultant may be required to attend with or on behalf of the Engineering Department staff. The Consultant shall answer any questions of the legislators and applicants and participate in the discussion on the transportation issues as needed.

### *FEE FOR SERVICE*

The Consultant shall negotiate with the developer directly for all fees and tasks associated with this work. The City shall not be invoiced for any of this work.

## **II. GENERAL ON-CALL TRAFFIC ENGINEERING SERVICES**

As determined by City staff, Work Orders shall be mutually agreed upon and the Consultant will help with general traffic engineering services associated with a variety of on-call projects to include, but not be limited to:

- Signal Design
- ITS Design
- Signal Timing
- Warrant Investigations for Signals and Turn Lanes.
- Roadway Design
- Safety Studies
- Transportation Planning and Modeling
- Traffic Data Collection
- Construction Engineering and Inspection

### **Work Order Request Procedure**

- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
- B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
  - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
  - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on the contract anniversary date, based upon the contract

execution date, for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;

- c. An explanation of how the cost was determined; and
  - d. A schedule for completion of the task, including a completion date.
- C. The City Engineer shall issue an approved and signed Work Order, including the Task Proposal as an attachment, in writing prior to any work being completed.
  - D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
  - E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.

## EXHIBIT B – FEE SCHEDULE

COF CONTRACT NO. 2022-0298

# THE CORRADINO GROUP, INC.

CORRADINO

ENGINEERS · PLANNERS · PROGRAM MANAGERS · ENVIRONMENTAL SCIENTISTS

October 14, 2022

Mr. Adam Moser  
City Traffic Engineer  
City of Franklin  
109 3<sup>rd</sup> Avenue South, Suite 133  
Franklin, TN 37065

**RE: On-Call Traffic Engineering Services - 2022 Classification Rate Schedule**

Dear Mr. Moser:

Per the City's request, The Corradino Group, Inc. (Corradino) is providing our 2022 Classification Rate Schedule for the above referenced contract. As noted in the Scope of Work, this Professional Services Contract is in effect for a minimum three (3)-year period, with option to extend annually for a maximum of five (5) years. Therefore, we respectfully request a clause within the contract to be able to provide a new rate schedule on each annual contract anniversary.

### 2022 CLASSIFICATION HOURLY RATE SCHEDULE

|                             |          |
|-----------------------------|----------|
| Principal .....             | \$275.00 |
| Project Manager .....       | \$230.00 |
| Senior ITS Engineer.....    | \$225.00 |
| Senior Design Engineer..... | \$220.00 |
| Staff Engineer.....         | \$150.00 |
| Engineer Intern.....        | \$100.00 |
| Senior Planner .....        | \$150.00 |
| Staff Planner.....          | \$115.00 |
| Travel Demand Modeler ..... | \$150.00 |
| Data Collector .....        | \$ 80.00 |
| Designer .....              | \$110.00 |
| Construction Manager .....  | \$195.00 |
| Senior Inspector.....       | \$110.00 |
| Inspector .....             | \$ 95.00 |
| Administrative.....         | \$ 75.00 |

We are excited for the opportunity to work with and serve as an extension of the City of Franklin staff for this contract. Should you have any questions or would like to discuss, please contact me at 615-406-8707 or [gbolden@corradino.com](mailto:gbolden@corradino.com).

Sincerely,  
**THE CORRADINO GROUP, INC.**



Gerald Bolden, PE, PTOE  
Vice President/TN Division Manager

Cc: File

377 RIVERSIDE DRIVE · SUITE 410  
FRANKLIN, TN 37064  
TEL 615.372.6972  
[WWW.CORRADINO.COM](http://WWW.CORRADINO.COM)

### IRAN DIVESTMENT ACT CERTIFICATION

By submission of a bid or proposal to the City of Franklin, the Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that neither they, nor any assignee of the resulting contract, is on the list created pursuant to T.C.A. § 12-12-106. The Bidder further certifies that it shall not utilize any subcontractor identified on the list created pursuant to T.C.A. § 12-12-106. This list is generated to identify entities ineligible to contract with the State of Tennessee or any political subdivision of the State pursuant to the Iran Divestment Act, T.C.A. §§ 12-12-101 – 113, and the current list may be found at the Tennessee Department of General Services, Central Procurement Office, website under the Public Information Library webpage at the following link:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>

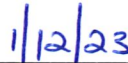
This certification shall not be necessary and shall not apply to contracts valued at one thousand dollars (\$1,000.00) or less.

### CERTIFICATION

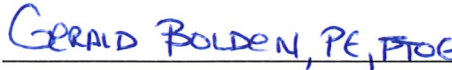
The Bidder certifies that, to the best of its knowledge and belief, it is not on the Iran Divestment Act list as described above.



*Signature*



*Date*



*Printed Name*



*Title*



*Name of Firm/Company*

**NON-BOYCOTT OF ISRAEL REQUIREMENTS**

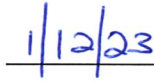
*Tennessee Code Annotated § 12-4-119* (as enacted by Chapter 775 of the Public Acts of 2022) prohibits a public entity from entering into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in, and will not for the duration of the contract engage in, a boycott of Israel. This requirement does not apply to a contract with a total potential value of less than two hundred fifty thousand dollars (\$250,000) or to contractors with less than ten (10) employees.

**CERTIFICATION**

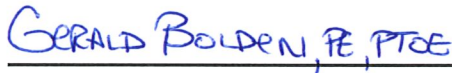
The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119



**Signature**



**Date**



**Printed Name**



**Title**



**Name of Firm/Company**



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**File #: 21-04199**

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**DATE:** February 6, 2023  
**TO:** Capital Investment Committee  
**FROM:** Paul Holzen, Director of Engineering  
Adam Moser, Traffic Engineer

**SUBJECT:**

Consideration Of COF Contract No. 2022-0299, With Kimley Horn Associates For Traffic Engineering On-Call Consultant Services

**PURPOSE:**

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Contract No. 2022-0299.

**BACKGROUND/STAFF COMMENTS:**

The Traffic Engineering On-Call consultants are responsible for a number of traffic engineering related tasks including third party review of development initiated traffic impact studies, traffic signal timing projects, traffic signal design projects, and other projects related to traffic engineering. The consultants were selected through a competitive Requests For Qualifications (RFQ) process, reviewed and graded by a technical review committee. The top four consultants were selected out of ten consultants that submitted for this on-call contract. This contract will be used in conjunction with Resolution 2022-82, "A Resolution For On-Call Traffic Engineering Professional Services Agreements (COF Contract No. 2022-0119, 2022-0298, 2022-0299 & 2022-0300) Authorizing The City Administrator To Execute Work Orders For The Above Contracts". This Resolution allows City staff to select an appropriate traffic engineering consultant and negotiate scope and fee for such projects, with the City Administrator approving the final task work order for such projects.

**FINANCIAL IMPACT:**

The cost to cover this task work order is provided under the Traffic Operations Center Engineering Services line item budget number in the annual budget.

**RECOMMENDATION:**

Staff recommends that COF Contract No. 2022-0299 be recommended to the Board of Mayor and Aldermen for approval.



**CITY OF FRANKLIN, TENNESSEE  
PROFESSIONAL SERVICES AGREEMENT  
COF Contract No. 2022-0299**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **KIMLEY-HORN AND ASSOCIATES, INC** hereinafter referenced as Consultant, who mutually agree as follows:

**DECLARATIONS.** The City desires to retain the Consultant to provide engineering and related technical services in connection with the City's project hereinafter referenced as the Project. The Project is described as follows:

**On-Call Traffic Engineering Services**

1. SCOPE OF SERVICES. The Consultant shall provide engineering and related technical services for the Project in accordance with the Scope of Services ("Services") as found in Attachment A, which shall be considered as an integral part hereof.
2. The Consultant shall submit as a part of Attachment A an individual Fee Schedule and a Completion Schedule for the Project based on the detailed Scope of Services.
3. In the event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.
4. The Consultant shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A in the Not to Exceed Amount for Individual Work Orders. Individual Work Orders shall be issued by the City Engineer, approved by the City Administrator, and shall be subject to all terms of this Agreement

The Board of Mayor and Aldermen Approved this Agreement on the \_\_\_\_ Day of \_\_\_\_\_ 20\_\_\_\_.

## **TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES**

### **ARTICLE 1. SERVICES.** The Consultant will:

- 1.1 Act for the City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry:
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Designate, in writing, the sole Project representative to coordinate with the City the Services to be provided, including all contact information.
- 1.5 Unless provided for in the Project Scope of Services (Attachment A), the Consultant shall perform all Services with his own forces (employees). Should sub-consultants be proposed to be used in the Project, a listing of said sub-consultants with Services to be performed shall be provided. After approval of this Agreement, no substitute for sub-consultants shall be allowed unless approved by the City.
- 1.6 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by the City at all reasonable times.

### **ARTICLE 2. CITY'S RESPONSIBILITIES.** The City, or its authorized representative, will:

- 2.1 Provide the Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the City.
- 2.2 Furnish right-of-entry onto the Project site for the Consultant's necessary field studies and surveys. The Consultant will endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.
- 2.3 Designate, in writing, the sole Project representative to coordinate with and direct the Consultant, including all contact information.
- 2.4 Guarantee to the Consultant that it has the legal capacity to enter into this contract and that sufficient monies are available to fund the Consultant's compensation.

### **ARTICLE 3. GENERAL CONDITIONS.**

- 3.1 The Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 The Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the Project acting upon written instruction issued by the Consultant.
- 3.3 Neither the City nor the Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party.
- 3.4 ALLOCATION OF RISK AND LIABILITY; GENERAL. Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this Article.

- 3.5 INDEMNIFICATION. The Consultant agrees to indemnify and hold the City harmless from and against legal liability for all claims, judgments, losses, damages, and expenses to the extent such claims, judgments, losses, damages, or expenses are caused by the Consultant's negligent act, error or omission in the performance of the Services of this Agreement. In the event claims, judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of the Consultant and the City, they shall be borne by each party in proportion to its own negligence.

3.5.1 SURVIVAL. The terms and conditions of this paragraph shall survive completion of this services agreement.

- 3.6 LIMITATIONS OF RESPONSIBILITY. The Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, Scope of Services ; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to the City or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to the Consultant in Attachment A, Scope of Services.

**ARTICLE 4. TERMINATION BY THE CITY.** The City may terminate this Agreement in accordance with the following terms and conditions:

- 4.1 TERMINATION FOR CONVENIENCE. The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the Consultant shall stop work when such termination becomes effective. The Consultant shall also terminate outstanding orders and subcontracts for the affected work. The Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Consultant has in its possession or control. When terminated for convenience, the Consultant shall be compensated as follows:

- (1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.
- (2) The City and the Consultant may agree to the compensation, if any, due to the Consultant hereunder.
- (3) Absent agreement to the amount due to the Consultant, the City shall pay the Consultant the following amounts:

- (a) Contract costs for labor, materials, equipment and other services accepted under this Agreement;
- (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the Consultant would have not profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
- (4) The total sum to be paid the Consultant under this Section shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

4.2 TERMINATION FOR CAUSE. If the Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Agreement, then the City, in addition to any other rights it may have against the Consultant or others, may terminate the performance of the Consultant, in whole or in part at the City's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, the Consultant shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Consultant. Otherwise, the Consultant shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Agreement.

In the event the employment of the Consultant is terminated by the City for cause pursuant to this Section and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Section and the provisions of Section 4.1 shall apply.

4.3 TERMINATION FOR NON-APPROPRIATION. The City may also terminate this Agreement, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of such funds, and such termination shall be on the terms of Section 4.1.

- 4.4 The City's rights under this Section shall be in addition to those contained elsewhere herein or provided by law.

**ARTICLE 5. SCOPE OF SERVICES.** The Consultant shall provide the Services as described in Scope of Services attached hereto as Attachment A and incorporated herein by reference.

- 5.1 By mutual agreement, this Agreement and scope can be amended by the parties. The scope and fee for any additional tasks or services under such amendment shall be mutually negotiated and agreed to in writing prior to beginning such additional tasks or services.
- 5.2 ENVIRONMENTAL RESPONSIBILITY. Where drilling/sampling services are involved, the samples obtained from the Project site are the property of the City. Should any of these samples be recognized by the Consultant to be contaminated, the City shall remove them from the Consultant's custody and transport them to a disposal site, all in accordance with applicable government statutes, ordinances, and regulations. For all other samples, the Consultant shall retain them for a sixty (60)-day period following the submission of the drilling/sampling report unless the City directs otherwise; thereafter, the Consultant shall discard the samples in accordance with all federal, state and local laws.

**ARTICLE 6. SCHEDULE.**

- 6.1 TIME OF THE ESSENCE. The parties agree that time is of the essence with respect to the parties' performance of all provisions of the Agreement.
- 6.2 Before executing this Agreement, the Consultant shall have prepared and submitted for approval to the City a Completion Schedule for the Project with milestones for the various stages (tasks) of the Services as outlined in the Scope of Services. The Consultant shall submit and obtain the City's approval for any proposed changes to the logic, durations, sequences, or timing of tasks as approved in the Completion Schedule.
- 6.3 FORCE MAJEURE. Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.
- 6.4 Should the City request changes in the scope, extent, or character of the Project, the fee and the time of performance of the Consultant's Services as indicated in Attachment A shall be adjusted equitably.

**ARTICLE 7. USE OF DOCUMENTS, DATA.**

- 7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by the Consultant pursuant to this Agreement are

instruments of service in respect to the Project. The City shall retain an ownership and property interest therein whether or not the Project is completed.

7.1.1 USE OF DATA SYSTEMS. The City maintains all rights to data systems and data (including derivative or hidden data such as metadata) created and used by the Consultant through information supplied to the Consultant by the City.

7.1.2 DISCLOSURE OF DOCUMENTS/DATA. The City may be required to disclose documents or data under state or federal law. The City shall notify the Consultant if a request for data or documents has been made and shall give the Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. The Consultant waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, the Consultant agrees to indemnify, defend, and hold harmless the City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of the City's reliance upon the Consultant representation that materials supplied by the Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads the Consultant and the Consultant assumes control over that claim.

7.2 By execution of this Agreement, the Consultant and his sub-consultant(s) grant the City a royalty-free, perpetual, irrevocable, and assignable license to use any and all intellectual property interest the Consultant or his sub-consultant(s) possess to any drawings, details, specifications, documents, and other information created before each of their first involvement with the Project and subsequently incorporated into the Project's documents. City-furnished data that may be relied upon by the Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by the City shall be used by the Consultant only for the Project as described herein. The City's posting or publication of such documents created by the Consultant for the City shall constitute fair use and shall not constitute an infringement of the Consultant's copyright, if any.

7.3 Documents that may be relied upon by the City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by the Consultant to the City are only for convenience of the City, unless the delivery of the Project in electronic media format has been dictated in the Scope of Services attached hereto as Attachment A. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.

7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, the Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by the City.

7.5 When transferring documents in electronic media format, the Consultant makes no representations as to long term compatibility, usability, or readability, of documents



resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, the Consultant at the beginning of this Project.

- 7.6 The City may make and retain copies of Documents for information and reference in connection with use on the Project by the City, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by the City or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by the Consultant, as appropriate for the specific purpose intended, will be at the City's sole risk and without liability or legal exposure to the Consultant or to the Consultant's sub-consultants.
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 7.8 Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle the Consultant to further compensation at rates to be agreed upon by the City and the Consultant.

#### **ARTICLE 8. INSURANCE.**

- 8.1 During the performance of the Services under this Agreement, the Consultant shall maintain the following minimum insurance:
  - a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
  - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
  - c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
  - d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 The Consultant shall add the City as an additional insured on all policies unless otherwise prohibited.
- 8.3 The Consultant shall, upon execution of this Agreement, furnish the City with certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty (30) days' written notice to the City.
- 8.4 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. The City agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as the City deems adequate to indemnify the City, the Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

#### **ARTICLE 9. PAYMENT.**

- 9.1 The City will pay the Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope of Services. The Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. The City shall give prompt written notice of any disputed amount and shall pay the remaining amount.

## **ARTICLE 10. MISCELLANEOUS PROVISIONS**

- 10.1 EQUAL EMPLOYMENT OPPORTUNITY. In connection with this Agreement and the Project, the City and the Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. The City and the Consultant will take affirmative action to ensure that the contractor used for the Project does not discriminate against any employee and employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.1.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.2 TITLE VI – CIVIL RIGHTS ACT OF 1964. The City and the Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.
- 10.2.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.3 NO THIRD-PARTY RIGHTS CREATED. The City and the Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to their successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement. The Services provided for in this Agreement are for the sole use and benefit of the City and the Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.
- 10.4 WARRANTIES/LIMITATION OF LIABILITY/WAIVER. The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by the Consultant to limit its liability shall be void and unenforceable.

## **ARTICLE 11. EXTENT OF AGREEMENT:**

- 11.1 APPLICABLE LAW/CHOICE OF FORUM AND VENUE. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.
- 11.2 ENTIRE AGREEMENT. This Agreement, including these terms and conditions, represent the entire Agreement between the City and the Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by the City and the Consultant.

**ARTICLE 12. DISPUTE RESOLUTION, BREACH.**

- 12.1 If a dispute should arise relating to the performance of or payment for the Services under this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to this Agreement. No arbitration or mediation shall be binding.
- 12.2 BREACH. Upon deliberate breach of the Agreement by either party, the non-breaching party shall be entitled to terminate the Agreement with notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

**ARTICLE 13. SURVIVAL.**

The provisions contained in this Professional Services Agreement shall survive the completion of or any termination of the Agreement, contract or other document to which it may accompany or incorporate by reference or which subsequently may be modified, unless expressly excepted from this Article upon consent of both parties.

**THE CITY OF FRANKLIN, TENNESSEE:**

\_\_\_\_\_  
(Signature)

Name: Dr. Ken Moore

Title: Mayor

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

**KIMLEY-HORN AND ASSOCIATES, INC:**

\_\_\_\_\_  
(Signature)

Name: LEO ESPELET

Title: VICE PRESIDENT

Date: 01/11/2023

**Attest:**

\_\_\_\_\_  
(Signature)

Eric S. Stuckey  
City Administrator

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

**Approved as to Form:**

\_\_\_\_\_  
William E. Squires, Assistant City Attorney

**ATTACHMENT A**  
**Scope of Work**  
**On-Call Traffic Engineering**  
**Services City of Franklin,**  
**Tennessee**

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Kimley-Horn and Associates, Inc (Consultant) is pleased to provide this proposal for On-Call Traffic Engineering Services to the City of Franklin, TN (City). It is anticipated that this contract will be in effect for a minimum three (3)-year period, with option to extend annually for a maximum of five (5) years. No minimum or maximum contract schedule is guaranteed. The Consultant understands that the City reserves the right to cancel and readvertise for these services at any time.

**I. TRAFFIC ENGINEERING SERVICES – TIA PREPARATION OR REVIEW**

*BACKGROUND*

The City of Franklin Zoning Ordinance provides the requirements for Transportation Impact Analyses (TIA) for development. Therefore, the City has a need for peer review OR preparation of TIAs in conjunction with the Planning/Engineering Department staff review of development applications. Such TIAs may be prepared by the developer requiring peer review from the City Traffic Engineering Consultant under this contract, also known as 3<sup>rd</sup> party review of the TIA. For 3<sup>rd</sup> party peer review, the Consultant shall agree to enter into an agreement with the developer with any fee paid directly from the developer to the Consultant prior to Consultant TIA review, and only after all parties have a signed TIA Memorandum of Understanding (MOU) using the City's standard TIA MOU form. Prior to TIA review, the City shall contact the Consultant to verify participation and availability for 3<sup>rd</sup> party review of the TIA, including participation in a TIA scoping meeting.

In rare cases, larger developments may require the Consultant to develop and prepare the TIA for the developer, as requested by the City. In this case, the Consultant will prepare the full TIA after a signed TIA MOU has been issued, and after negotiation of fee with the developer. The developer will pay the Consultant directly for this work.

*PROJECT MANAGEMENT AND COORDINATION*

The Consultant will manage each TIA review or TIA preparation project for the City of Franklin following all applicable City of Franklin development review processes and standards. At the beginning of the project, the City of Franklin Engineering Staff will hold a scoping meeting with the Consultant and developer to initiate the project and formulate a clear understanding of the project requirements. This meeting will include discussion of the project scope, schedule, communication protocol, and team organization.

The Schedule associated with task 1-3 below shall be based on the City's normal development review process.

#### *TASK 1: INITIAL COORDINATION AND GUIDANCE OF DEVELOPER TIAS*

Development applications, with a significant traffic impact, require a detailed TIA in order to identify needed transportation improvements. Such improvements will need to integrate with the City of Franklin Comprehensive Transportation Network Plan (CTNP), as well as other studies such as the Cool Springs Transportation Study (CSTS) and Goose Creek Coordinated Study. This includes knowledge of multi-modal activities occurring on the transportation network in the development area. The Consultant will have a thorough knowledge of the CTNP, City TIA Guidelines as well as other background or ongoing TIAs that relate to the development proposal. This knowledge will include the scope and schedule of City Capital Improvement Projects or other developer and government agency projects for transportation within the development area. This inventory of data gathering is to facilitate the initial scoping meeting with the developer in accordance with the Zoning Ordinance and TIA Guidelines. The Consultant will attend the initial scoping meeting with the developer and provide available pertinent data as well as give general guidance on scoping meeting items, as defined in the TIA Guidelines.

The developer will submit a Memorandum of Understanding (MOU) to the Consultant, and City staff as requested, based on input received at the initial meeting. The Consultant will answer any questions from the developer during the TIA's formulation of the MOU, and clear final review approval of the MOU with the City Engineering Staff before authorizing the developer to proceed. The Consultant shall also answer any questions from the developer in the process of performing the study.

#### *TASK 2: DETAILED REVIEW OF SUBMITTED TIAs*

The Consultant shall perform a detailed investigation of the submitted TIA. For reference, the final version of the TIA is needed prior to the second submittal in the Design Review Team cycle. This TIA review includes the checking of the basic study assumptions, the inventory data applied, the directional distributions to be used, the trip generation calculations, the technical analyses, and the conclusions and recommendations. The Consultant shall clear with the Engineering staff any corrections and adjustments that would be needed prior to relaying comments on the submitted TIA to the developer. This communication between the Consultant and the City Engineering Staff may take the form of telephone call, e-mail and/or written memorandum.

The Consultant will investigate the recommended TIA improvements in the context of other improvements proposed or planned by government agencies and/or area developments. The Consultant will distinguish between needed on-site versus off-site improvements. The Consultant will make comment on right-of-way constraints and requirements, sight distance issues, ITS elements and multi-modal accommodations as well as travel lanes and traffic controls. Where new turn lane and/or traffic signals are proposed, the consultant will review warrant analysis submitted by the developer for these improvements according to established methods and ensure compliance with the City of Franklin Street Standards and Specifications. In the case of a re-submittal of a TIA that needed revision, the Consultant shall again clear with City Engineering staff the final version before relaying acceptance of the revised TIA to the developer.

### *TASK 3: ESTABLISHMENT OF TIA RECOMMENDATIONS*

The Consultant shall prepare a comprehensive transportation recommendation memorandum for the development's staff report, to include developer obligations for each specific improvement with the associated development stage requirement for completion. The consultant shall provide this memorandum to City Engineering staff for placing the requirements into the staff report, in time for the publication of the staff report for its upcoming FMPC meeting.

When a development with a TIA component is on the agenda for an FMPC and/or BOMA meeting, the Consultant may be required to attend with or on behalf of the Engineering Department staff. The Consultant shall answer any questions of the legislators and applicants and participate in the discussion on the transportation issues as needed.

### *FEE FOR SERVICE*

The Consultant shall negotiate with the developer directly for all fees and tasks associated with this work. The City shall not be invoiced for any of this work.

## **II. GENERAL ON-CALL TRAFFIC ENGINEERING SERVICES**

As determined by City staff, Work Orders shall be mutually agreed upon and the Consultant will help with general traffic engineering services associated with a variety of on-call projects to include, but not be limited to:

- Signal Design
- ITS Design
- Signal Timing
- Warrant Investigations for Signals and Turn Lanes.
- Roadway Design
- Safety Studies
- Transportation Planning and Modeling
- Traffic Data Collection
- Construction Engineering and Inspection

### Work Order Request Procedure

- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
- B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
  - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
  - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to



become effective on the contract anniversary date, based upon the contract execution date, for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;

- c. An explanation of how the cost was determined; and
  - d. A schedule for completion of the task, including a completion date.
- C. The City Engineer shall issue an approved and signed Work Order, including the Task Proposal as an attachment, in writing prior to any work being completed.
- D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
- E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.

**Kimley-Horn and Associates, Inc. (Prime Consultant)**
**Hourly Rate Schedule**

*(Effective upon contract execution for 12 months,  
subject to annual adjustment each additional year)*

| Classification / Description | Rate  |
|------------------------------|-------|
| Designer                     | \$130 |
| Senior Designer              | \$160 |
| Analyst                      | \$155 |
| Senior Analyst               | \$175 |
| Professional                 | \$215 |
| Senior Professional I        | \$240 |
| Senior Professional II       | \$265 |
| Project Manager              | \$295 |
| Principal                    | \$310 |
| Administrative               | \$100 |
| Senior Administrative        | \$115 |

### IRAN DIVESTMENT ACT CERTIFICATION

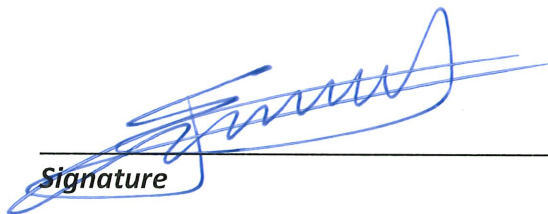
By submission of a bid or proposal to the City of Franklin, the Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that neither they, nor any assignee of the resulting contract, is on the list created pursuant to T.C.A. § 12-12-106. The Bidder further certifies that it shall not utilize any subcontractor identified on the list created pursuant to T.C.A. § 12-12-106. This list is generated to identify entities ineligible to contract with the State of Tennessee or any political subdivision of the State pursuant to the Iran Divestment Act, T.C.A. §§ 12-12-101 – 113, and the current list may be found at the Tennessee Department of General Services, Central Procurement Office, website under the Public Information Library webpage at the following link:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>

This certification shall not be necessary and shall not apply to contracts valued at one thousand dollars (\$1,000.00) or less.

### CERTIFICATION

The Bidder certifies that, to the best of its knowledge and belief, it is not on the Iran Divestment Act list as described above.

  
\_\_\_\_\_  
*Signature*

1/11/2023  
\_\_\_\_\_  
*Date*

LEO ESPELET  
\_\_\_\_\_  
*Printed Name*

VICE PRESIDENT  
\_\_\_\_\_  
*Title*

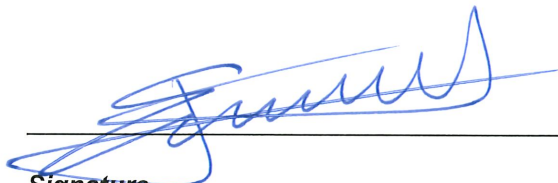
KIMLEX-HORN AND ASSOCIATES  
\_\_\_\_\_  
*Name of Firm/Company*

### NON-BOYCOTT OF ISRAEL REQUIREMENTS

*Tennessee Code Annotated* § 12-4-119 (as enacted by Chapter 775 of the Public Acts of 2022) prohibits a public entity from entering into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in, and will not for the duration of the contract engage in, a boycott of Israel. This requirement does not apply to a contract with a total potential value of less than two hundred fifty thousand dollars (\$250,000) or to contractors with less than ten (10) employees.

### CERTIFICATION

The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119

  
\_\_\_\_\_  
Signature

1/11/2023  
\_\_\_\_\_  
Date

LEO ESPELET  
\_\_\_\_\_  
Printed Name

VICE PRESIDENT  
\_\_\_\_\_  
Title

KIMLEY-HORN AND ASSOCIATES  
\_\_\_\_\_  
Name of Firm/Company



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**File #: 21-04199**

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**DATE:** February 6, 2023  
**TO:** Capital Investment Committee  
**FROM:** Paul Holzen, Director of Engineering  
Adam Moser, Traffic Engineer

**SUBJECT:**

Consideration Of COF Contract No. 2022-0300, With Neel Schaffer, Inc For Traffic Engineering On-Call Consultant Services

**PURPOSE:**

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Contract No. 2022-0300.

**BACKGROUND/STAFF COMMENTS:**

The Traffic Engineering On-Call consultants are responsible for a number of traffic engineering related tasks including third party review of development initiated traffic impact studies, traffic signal timing projects, traffic signal design projects, and other projects related to traffic engineering. The consultants were selected through a competitive Requests For Qualifications (RFQ) process, reviewed and graded by a technical review committee. The top four consultants were selected out of ten consultants that submitted for this on-call contract. This contract will be used in conjunction with Resolution 2022-82, "A Resolution For On-Call Traffic Engineering Professional Services Agreements (COF Contract No. 2022-0119, 2022-0298, 2022-0299 & 2022-0300) Authorizing The City Administrator To Execute Work Orders For The Above Contracts". This Resolution allows City staff to select an appropriate traffic engineering consultant and negotiate scope and fee for such projects, with the City Administrator approving the final task work order for such projects.

**FINANCIAL IMPACT:**

The cost to cover this task work order is provided under the Traffic Operations Center Engineering Services line item budget number in the annual budget.

**RECOMMENDATION:**

Staff recommends that COF Contract No. 2022-0300 be recommended to the Board of Mayor and Aldermen for approval.

**CITY OF FRANKLIN, TENNESSEE  
PROFESSIONAL SERVICES AGREEMENT  
COF Contract No. 2022-0300**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **NEEL-SCHAFER, INC** hereinafter referenced as Consultant, who mutually agree as follows:

**DECLARATIONS.** The City desires to retain the Consultant to provide engineering and related technical services in connection with the City's project hereinafter referenced as the Project. The Project is described as follows:

**On-Call Traffic Engineering Services**

1. SCOPE OF SERVICES. The Consultant shall provide engineering and related technical services for the Project in accordance with the Scope of Services ("Services") as found in Attachment A, which shall be considered as an integral part hereof.
2. The Consultant shall submit as a part of Attachment A an individual Fee Schedule and a Completion Schedule for the Project based on the detailed Scope of Services.
3. In the event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.
4. The Consultant shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A in the Not to Exceed Amount for Individual Work Orders. Individual Work Orders shall be issued by the City Engineer, approved by the City Administrator, and shall be subject to all terms of this Agreement

**The Board of Mayor and Aldermen Approved this Agreement on the \_\_\_\_\_Day of  
\_\_\_\_\_20\_\_\_\_.**



## **TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES**

### **ARTICLE 1. SERVICES.** The Consultant will:

- 1.1 Act for the City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry:
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Designate, in writing, the sole Project representative to coordinate with the City the Services to be provided, including all contact information.
- 1.5 Unless provided for in the Project Scope of Services (Attachment A), the Consultant shall perform all Services with his own forces (employees). Should sub-consultants be proposed to be used in the Project, a listing of said sub-consultants with Services to be performed shall be provided. After approval of this Agreement, no substitute for sub-consultants shall be allowed unless approved by the City.
- 1.6 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by the City at all reasonable times.

### **ARTICLE 2. CITY'S RESPONSIBILITIES.** The City, or its authorized representative, will:

- 2.1 Provide the Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the City.
- 2.2 Furnish right-of-entry onto the Project site for the Consultant's necessary field studies and surveys. The Consultant will endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.
- 2.3 Designate, in writing, the sole Project representative to coordinate with and direct the Consultant, including all contact information.
- 2.4 Guarantee to the Consultant that it has the legal capacity to enter into this contract and that sufficient monies are available to fund the Consultant's compensation.

### **ARTICLE 3. GENERAL CONDITIONS.**

- 3.1 The Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 The Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the Project acting upon written instruction issued by the Consultant.
- 3.3 Neither the City nor the Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party.
- 3.4 ALLOCATION OF RISK AND LIABILITY; GENERAL. Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this Article.

- 3.5 INDEMNIFICATION. The Consultant agrees to indemnify and hold the City harmless from and against legal liability for all claims, judgments, losses, damages, and expenses to the extent such claims, judgments, losses, damages, or expenses are caused by the Consultant's negligent act, error or omission in the performance of the Services of this Agreement. In the event claims, judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of the Consultant and the City, they shall be borne by each party in proportion to its own negligence.

3.5.1 SURVIVAL. The terms and conditions of this paragraph shall survive completion of this services agreement.

- 3.6 LIMITATIONS OF RESPONSIBILITY. The Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, Scope of Services ; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to the City or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to the Consultant in Attachment A, Scope of Services.

**ARTICLE 4. TERMINATION BY THE CITY.** The City may terminate this Agreement in accordance with the following terms and conditions:

- 4.1 TERMINATION FOR CONVENIENCE. The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the Consultant shall stop work when such termination becomes effective. The Consultant shall also terminate outstanding orders and subcontracts for the affected work. The Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Consultant has in its possession or control. When terminated for convenience, the Consultant shall be compensated as follows:

- (1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.
- (2) The City and the Consultant may agree to the compensation, if any, due to the Consultant hereunder.
- (3) Absent agreement to the amount due to the Consultant, the City shall pay the Consultant the following amounts:

- (a) Contract costs for labor, materials, equipment and other services accepted under this Agreement;
  - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the Consultant would have not profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
- (4) The total sum to be paid the Consultant under this Section shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- 4.2 TERMINATION FOR CAUSE. If the Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Agreement, then the City, in addition to any other rights it may have against the Consultant or others, may terminate the performance of the Consultant, in whole or in part at the City's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, the Consultant shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Consultant. Otherwise, the Consultant shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Agreement.

In the event the employment of the Consultant is terminated by the City for cause pursuant to this Section and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Section and the provisions of Section 4.1 shall apply.

- 4.3 TERMINATION FOR NON-APPROPRIATION. The City may also terminate this Agreement, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of such funds, and such termination shall be on the terms of Section 4.1.

- 4.4 The City's rights under this Section shall be in addition to those contained elsewhere herein or provided by law.

**ARTICLE 5. SCOPE OF SERVICES.** The Consultant shall provide the Services as described in Scope of Services attached hereto as Attachment A and incorporated herein by reference.

- 5.1 By mutual agreement, this Agreement and scope can be amended by the parties. The scope and fee for any additional tasks or services under such amendment shall be mutually negotiated and agreed to in writing prior to beginning such additional tasks or services.
- 5.2 ENVIRONMENTAL RESPONSIBILITY. Where drilling/sampling services are involved, the samples obtained from the Project site are the property of the City. Should any of these samples be recognized by the Consultant to be contaminated, the City shall remove them from the Consultant's custody and transport them to a disposal site, all in accordance with applicable government statutes, ordinances, and regulations. For all other samples, the Consultant shall retain them for a sixty (60)-day period following the submission of the drilling/sampling report unless the City directs otherwise; thereafter, the Consultant shall discard the samples in accordance with all federal, state and local laws.

**ARTICLE 6. SCHEDULE.**

- 6.1 TIME OF THE ESSENCE. The parties agree that time is of the essence with respect to the parties' performance of all provisions of the Agreement.
- 6.2 Before executing this Agreement, the Consultant shall have prepared and submitted for approval to the City a Completion Schedule for the Project with milestones for the various stages (tasks) of the Services as outlined in the Scope of Services. The Consultant shall submit and obtain the City's approval for any proposed changes to the logic, durations, sequences, or timing of tasks as approved in the Completion Schedule.
- 6.3 FORCE MAJEURE. Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.
- 6.4 Should the City request changes in the scope, extent, or character of the Project, the fee and the time of performance of the Consultant's Services as indicated in Attachment A shall be adjusted equitably.

**ARTICLE 7. USE OF DOCUMENTS, DATA.**

- 7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by the Consultant pursuant to this Agreement are

instruments of service in respect to the Project. The City shall retain an ownership and property interest therein whether or not the Project is completed.

7.1.1 USE OF DATA SYSTEMS. The City maintains all rights to data systems and data (including derivative or hidden data such as metadata) created and used by the Consultant through information supplied to the Consultant by the City.

7.1.2 DISCLOSURE OF DOCUMENTS/DATA. The City may be required to disclose documents or data under state or federal law. The City shall notify the Consultant if a request for data or documents has been made and shall give the Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. The Consultant waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, the Consultant agrees to indemnify, defend, and hold harmless the City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of the City's reliance upon the Consultant representation that materials supplied by the Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads the Consultant and the Consultant assumes control over that claim.

7.2 By execution of this Agreement, the Consultant and his sub-consultant(s) grant the City a royalty-free, perpetual, irrevocable, and assignable license to use any and all intellectual property interest the Consultant or his sub-consultant(s) possess to any drawings, details, specifications, documents, and other information created before each of their first involvement with the Project and subsequently incorporated into the Project's documents. City-furnished data that may be relied upon by the Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by the City shall be used by the Consultant only for the Project as described herein. The City's posting or publication of such documents created by the Consultant for the City shall constitute fair use and shall not constitute an infringement of the Consultant's copyright, if any.

7.3 Documents that may be relied upon by the City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by the Consultant to the City are only for convenience of the City, unless the delivery of the Project in electronic media format has been dictated in the Scope of Services attached hereto as Attachment A. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.

7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, the Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by the City.

7.5 When transferring documents in electronic media format, the Consultant makes no representations as to long term compatibility, usability, or readability, of documents

resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, the Consultant at the beginning of this Project.

- 7.6 The City may make and retain copies of Documents for information and reference in connection with use on the Project by the City, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by the City or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by the Consultant, as appropriate for the specific purpose intended, will be at the City's sole risk and without liability or legal exposure to the Consultant or to the Consultant's sub-consultants.
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 7.8 Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle the Consultant to further compensation at rates to be agreed upon by the City and the Consultant.

#### **ARTICLE 8. INSURANCE.**

- 8.1 During the performance of the Services under this Agreement, the Consultant shall maintain the following minimum insurance:
  - a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
  - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
  - c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
  - d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 The Consultant shall add the City as an additional insured on all policies unless otherwise prohibited.
- 8.3 The Consultant shall, upon execution of this Agreement, furnish the City with certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty (30) days' written notice to the City.
- 8.4 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. The City agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as the City deems adequate to indemnify the City, the Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

#### **ARTICLE 9. PAYMENT.**

- 9.1 The City will pay the Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope of Services. The Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. The City shall give prompt written notice of any disputed amount and shall pay the remaining amount.



## **ARTICLE 10. MISCELLANEOUS PROVISIONS**

- 10.1 EQUAL EMPLOYMENT OPPORTUNITY. In connection with this Agreement and the Project, the City and the Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. The City and the Consultant will take affirmative action to ensure that the contractor used for the Project does not discriminate against any employee and employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.1.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.2 TITLE VI – CIVIL RIGHTS ACT OF 1964. The City and the Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.
- 10.2.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.3 NO THIRD-PARTY RIGHTS CREATED. The City and the Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to their successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement. The Services provided for in this Agreement are for the sole use and benefit of the City and the Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.
- 10.4 WARRANTIES/LIMITATION OF LIABILITY/WAIVER. The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by the Consultant to limit its liability shall be void and unenforceable.

## **ARTICLE 11. EXTENT OF AGREEMENT:**

- 11.1 APPLICABLE LAW/CHOICE OF FORUM AND VENUE. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.
- 11.2 ENTIRE AGREEMENT. This Agreement, including these terms and conditions, represent the entire Agreement between the City and the Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by the City and the Consultant.

**ARTICLE 12. DISPUTE RESOLUTION, BREACH.**

- 12.1 If a dispute should arise relating to the performance of or payment for the Services under this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to this Agreement. No arbitration or mediation shall be binding.
- 12.2 BREACH. Upon deliberate breach of the Agreement by either party, the non-breaching party shall be entitled to terminate the Agreement with notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

**ARTICLE 13. SURVIVAL.**

The provisions contained in this Professional Services Agreement shall survive the completion of or any termination of the Agreement, contract or other document to which it may accompany or incorporate by reference or which subsequently may be modified, unless expressly excepted from this Article upon consent of both parties.

**THE CITY OF FRANKLIN, TENNESSEE:**

\_\_\_\_\_  
(Signature)

Name: Dr. Ken Moore

Title: Mayor

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

**Neel-Schaffer, Inc:**

\_\_\_\_\_  
(Signature)

Name: Gregory D. Judy, P.E., PTOE

Title: Vice President / Engineer Manager

Date: 01/11/2023

**Attest:**

\_\_\_\_\_  
(Signature)

Eric S. Stuckey  
City Administrator

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

**Approved as to Form:**

\_\_\_\_\_  
William E. Squires, Assistant City Attorney

**ATTACHMENT A**  
**Scope of Work**  
**On-Call Traffic Engineering**  
**Services City of Franklin,**  
**Tennessee**

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Neel-Schaffer, Inc (Consultant) is pleased to provide this proposal for On-Call Traffic Engineering Services to the City of Franklin, TN (City). It is anticipated that this contract will be in effect for a minimum three (3)-year period, with option to extend annually for a maximum of five (5) years. No minimum or maximum contract schedule is guaranteed. The Consultant understands that the City reserves the right to cancel and readvertise for these services at any time.

**I. TRAFFIC ENGINEERING SERVICES – TIA PREPARATION OR REVIEW**

*BACKGROUND*

The City of Franklin Zoning Ordinance provides the requirements for Transportation Impact Analyses (TIA) for development. Therefore, the City has a need for peer review OR preparation of TIAs in conjunction with the Planning/Engineering Department staff review of development applications. Such TIAs may be prepared by the developer requiring peer review from the City Traffic Engineering Consultant under this contract, also known as 3<sup>rd</sup> party review of the TIA. For 3<sup>rd</sup> party peer review, the Consultant shall agree to enter into an agreement with the developer with any fee paid directly from the developer to the Consultant prior to Consultant TIA review, and only after all parties have a signed TIA Memorandum of Understanding (MOU) using the City's standard TIA MOU form. Prior to TIA review, the City shall contact the Consultant to verify participation and availability for 3<sup>rd</sup> party review of the TIA, including participation in a TIA scoping meeting.

In rare cases, larger developments may require the Consultant to develop and prepare the TIA for the developer, as requested by the City. In this case, the Consultant will prepare the full TIA after a signed TIA MOU has been issued, and after negotiation of fee with the developer. The developer will pay the Consultant directly for this work.

*PROJECT MANAGEMENT AND COORDINATION*

The Consultant will manage each TIA review or TIA preparation project for the City of Franklin following all applicable City of Franklin development review processes and standards. At the beginning of the project, the City of Franklin Engineering Staff will hold a scoping meeting with the Consultant and developer to initiate the project and formulate a clear understanding of the project requirements. This meeting will include discussion of the project scope, schedule, communication protocol, and team organization.

The Schedule associated with task 1-3 below shall be based on the City's normal development review process.

#### *TASK 1: INITIAL COORDINATION AND GUIDANCE OF DEVELOPER TIAS*

Development applications, with a significant traffic impact, require a detailed TIA in order to identify needed transportation improvements. Such improvements will need to integrate with the City of Franklin Comprehensive Transportation Network Plan (CTNP), as well as other studies such as the Cool Springs Transportation Study (CSTS) and Goose Creek Coordinated Study. This includes knowledge of multi-modal activities occurring on the transportation network in the development area. The Consultant will have a thorough knowledge of the CTNP, City TIA Guidelines as well as other background or ongoing TIAs that relate to the development proposal. This knowledge will include the scope and schedule of City Capital Improvement Projects or other developer and government agency projects for transportation within the development area. This inventory of data gathering is to facilitate the initial scoping meeting with the developer in accordance with the Zoning Ordinance and TIA Guidelines. The Consultant will attend the initial scoping meeting with the developer and provide available pertinent data as well as give general guidance on scoping meeting items, as defined in the TIA Guidelines.

The developer will submit a Memorandum of Understanding (MOU) to the Consultant, and City staff as requested, based on input received at the initial meeting. The Consultant will answer any questions from the developer during the TIA's formulation of the MOU, and clear final review approval of the MOU with the City Engineering Staff before authorizing the developer to proceed. The Consultant shall also answer any questions from the developer in the process of performing the study.

#### *TASK 2: DETAILED REVIEW OF SUBMITTED TIAs*

The Consultant shall perform a detailed investigation of the submitted TIA. For reference, the final version of the TIA is needed prior to the second submittal in the Design Review Team cycle. This TIA review includes the checking of the basic study assumptions, the inventory data applied, the directional distributions to be used, the trip generation calculations, the technical analyses, and the conclusions and recommendations. The Consultant shall clear with the Engineering staff any corrections and adjustments that would be needed prior to relaying comments on the submitted TIA to the developer. This communication between the Consultant and the City Engineering Staff may take the form of telephone call, e-mail and/or written memorandum.

The Consultant will investigate the recommended TIA improvements in the context of other improvements proposed or planned by government agencies and/or area developments. The Consultant will distinguish between needed on-site versus off-site improvements. The Consultant will make comment on right-of-way constraints and requirements, sight distance issues, ITS elements and multi-modal accommodations as well as travel lanes and traffic controls. Where new turn lane and/or traffic signals are proposed, the consultant will review warrant analysis submitted by the developer for these improvements according to established methods and ensure compliance with the City of Franklin Street Standards and Specifications. In the case of a re-submittal of a TIA that needed revision, the Consultant shall again clear with City Engineering staff the final version before relaying acceptance of the revised TIA to the developer.

### *TASK 3: ESTABLISHMENT OF TIA RECOMMENDATIONS*

The Consultant shall prepare a comprehensive transportation recommendation memorandum for the development's staff report, to include developer obligations for each specific improvement with the associated development stage requirement for completion. The consultant shall provide this memorandum to City Engineering staff for placing the requirements into the staff report, in time for the publication of the staff report for its upcoming FMPC meeting.

When a development with a TIA component is on the agenda for an FMPC and/or BOMA meeting, the Consultant may be required to attend with or on behalf of the Engineering Department staff. The Consultant shall answer any questions of the legislators and applicants and participate in the discussion on the transportation issues as needed.

### *FEE FOR SERVICE*

The Consultant shall negotiate with the developer directly for all fees and tasks associated with this work. The City shall not be invoiced for any of this work.

## **II. GENERAL ON-CALL TRAFFIC ENGINEERING SERVICES**

As determined by City staff, Work Orders shall be mutually agreed upon and the Consultant will help with general traffic engineering services associated with a variety of on-call projects to include, but not be limited to:

- Signal Design
- ITS Design
- Signal Timing
- Warrant Investigations for Signals and Turn Lanes.
- Roadway Design
- Safety Studies
- Transportation Planning and Modeling
- Traffic Data Collection
- Construction Engineering and Inspection

### **Work Order Request Procedure**

- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
- B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
  - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
  - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on the contract anniversary date, based upon the contract

execution date, for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;

- c. An explanation of how the cost was determined; and
  - d. A schedule for completion of the task, including a completion date.
- C. The City Engineer shall issue an approved and signed Work Order, including the Task Proposal as an attachment, in writing prior to any work being completed.
- D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
- E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.



**ATTACHMENT B**  
**2022 NEEL-SCHAFER RATE SCHEDULE**  
**CITY OF FRANKLIN ON-CALL TRAFFIC ENGINEERING SERVICES**  
**COF CONTRACT # 2022-0119**

| <b>2022 Rate Schedule</b>      |                                                         |                    |
|--------------------------------|---------------------------------------------------------|--------------------|
| <b>Employee Classification</b> | <b>Position Title</b>                                   | <b>Hourly Rate</b> |
| P-9                            | Principal                                               | \$250.00           |
| P-8                            | Senior Manager / Vice President                         | \$225.00           |
| P-7                            | Engineer Manager & Professional IV                      | \$210.00           |
| P-6                            | Senior Project Managers & Professional III              | \$185.00           |
| P-5                            | Project Managers & Professional II                      | \$165.00           |
| P-4                            | Engineer & Professional I                               | \$130.00           |
| P-1 thru P-3                   | Profession Intern I - III                               | \$100.00           |
| T-5                            | Certified Engineering Technician/Supervisory Technician | \$120.00           |
| T-4                            | Technician IV                                           | \$110.00           |
| T-3                            | Technician III/Inspector III                            | \$95.00            |
| T-2                            | Technician II/Inspector II                              | \$85.00            |
| T-1                            | Technician I/Inspector I                                | \$75.00            |
| T-1                            | Student Intern                                          | \$50.00            |
| A-1 thru A-4                   | Administrative/Clerical                                 | \$75.00            |

<sup>1</sup> Per COF Contract #2022-0119, the COF allows Consultant the opportunity to submit amended fee rate schedule no more often than annually on the the anniversary date of contract execution.

### **IRAN DIVESTMENT ACT CERTIFICATION**

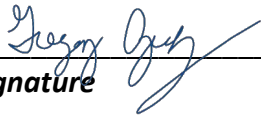
By submission of a bid or proposal to the City of Franklin, the Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that neither they, nor any assignee of the resulting contract, is on the list created pursuant to T.C.A. § 12-12-106. The Bidder further certifies that it shall not utilize any subcontractor identified on the list created pursuant to T.C.A. § 12-12-106. This list is generated to identify entities ineligible to contract with the State of Tennessee or any political subdivision of the State pursuant to the Iran Divestment Act, T.C.A. §§ 12-12-101 – 113, and the current list may be found at the Tennessee Department of General Services, Central Procurement Office, website under the Public Information Library webpage at the following link:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>

This certification shall not be necessary and shall not apply to contracts valued at one thousand dollars (\$1,000.00) or less.

### **CERTIFICATION**

**The Bidder certifies that, to the best of its knowledge and belief, it is not on the Iran Divestment Act list as described above.**

  
**Signature**

01/11/2023  
**Date**

Gregory D. Judy, P.E., PTOE  
**Printed Name**

Vice President / Engineer Manager  
**Title**

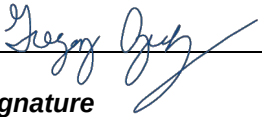
Neel-Schaffer, Inc.  
**Name of Firm/Company**

### **NON-BOYCOTT OF ISRAEL REQUIREMENTS**

*Tennessee Code Annotated* § 12-4-119 (as enacted by Chapter 775 of the Public Acts of 2022) prohibits a public entity from entering into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in, and will not for the duration of the contract engage in, a boycott of Israel. This requirement does not apply to a contract with a total potential value of less than two hundred fifty thousand dollars (\$250,000) or to contractors with less than ten (10) employees.

### **CERTIFICATION**

The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119

  
\_\_\_\_\_  
**Signature**

01/11/2023  
\_\_\_\_\_  
**Date**

Gregory D. Judy, P.E., PTOE  
\_\_\_\_\_  
**Printed Name**

Vice President / Engineer Manager  
\_\_\_\_\_  
**Title**

Neel-Schaffer, Inc.  
\_\_\_\_\_  
**Name of Firm/Company**



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**File #: 21-04162**

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**DATE:** February 6, 2023  
**TO:** Capital Investment Committee  
**FROM:** Paul Holzen, Director of Engineering  
Adam Moser, Traffic Engineer

**SUBJECT:**

Consideration Of Resolution 2022-82, A Resolution For On-Call Traffic Engineering Professional Services Agreements (COF Contract No. 2022-0119, 2022-0298, 2022-0299 & 2022-0300)  
Authorizing The City Administrator To Execute Work Orders For The Above Contracts

**PURPOSE:**

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Resolution 2022-82.

**BACKGROUND/STAFF COMMENTS:**

The Traffic Engineering On-Call consultants are responsible for a number of traffic engineering related tasks including third party review of development initiated traffic impact studies, traffic signal timing projects, traffic signal design projects, and other projects related to traffic engineering. The consultants were selected through a competitive Requests For Qualifications (RFQ) process, reviewed and graded by a technical review committee. The top four consultants were selected out of ten consultants that submitted for this on-call contract. This resolution allows City staff to select an appropriate traffic engineering consultant and negotiate scope and fee for such projects, with the City Administrator approving the final task work order for such projects.

**FINANCIAL IMPACT:**

The cost to cover these task work orders is provided under the Traffic Operations Center Engineering Services line item in the annual budget or provided as part of an approved Capital Project.

**RECOMMENDATION:**

Staff recommends that Resolution 2022-82 be recommended to the Board of Mayor and Aldermen for approval.

## **RESOLUTION 2022-82**

### **A RESOLUTION APPROVING THE CITY'S ON-CALL TRAFFIC ENGINEERING PROFESSIONAL SERVICES AGREEMENTS (COF CONTRACT NOS. 2022-0119, 2022-0298, 2022-0299 & 2022-0300) AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE WORK ORDERS FOR THE ABOVE CONTRACTS**

**WHEREAS**, the Board of Mayor and Aldermen of the City of Franklin, Tennessee ("BOMA") desires to move toward the most effective administration of City business; and

**WHEREAS**, on August 3, 2022, the City of Franklin published a "Notice Regarding A Request for Qualifications and Letters of Interest" for On-Call Traffic Engineering Services; and

**WHEREAS**, the city received ten (10) submissions for consideration prior to the published deadline of August 26, 2022 at 2:00 PM (CDT); and

**WHEREAS**, after careful review and scoring of all submissions, city staff recommends the approval of Professional Services Agreements for On-Call Traffic Engineering Services with Barge Design Solutions, Inc. (COF Contract No. 2022-0119), The Corradino Group (COF Contract No. 2022-0298), Kimley-Horn and Associates, Inc. (COF Contract No. 2022-0299), and Neel-Schaffer, Inc. (COF Contract No. 2022-0300); and

**WHEREAS**, to efficiently facilitate development reviews, assist in the delivery of capital projects, and perform necessary technical studies and designs, the BOMA finds that it is in the best interests of the City of Franklin to authorize the City Administrator to execute Work Orders associated with approved On-Call Professional Services Agreements; and

**WHEREAS**, the funding to be authorized for expenditure in association with the Professional Services Agreements for On-Call Traffic Engineering Services shall be approved by the BOMA as either a part of the city's Annual Operating & Equipment Budget or as a part of one of the city's many Capital Investment Program projects.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, AS FOLLOWS:**

**SECTION I.** The Professional Services Agreements for On-Call Traffic Engineering Services are approved with Barge Design Solutions, Inc. (COF Contract No. 2022-0119), The Corradino Group (COF Contract No. 2022-0298), Kimley-Horn and Associates, Inc. (COF Contract No. 2022-0299), and Neel-Schaffer, Inc. (COF Contract No. 2022-0300).

**SECTION II.** All funding to be authorized for expenditure in association with the Professional Services Agreements for On-Call Traffic Engineering Services (COF Contract Nos. 2022-0119, 2022-0298, 2022-0299, and 2022-0300) shall be approved by the Board of Mayor and Aldermen as either a part of the city's Annual Operating & Capital Equipment Budget or as a part of one of the city's many Capital Investment Program projects.

**SECTION III.** The City Administrator is hereby authorized to review and approve the spending of funds with the Professional Services Agreements for On-Call Traffic Engineering Services (COF Contract

Nos. 2022-0119, 2022-0298, 2022-0299, and 2022-0300) by the execution of Work Orders associated with each individual Agreement.

**IT IS SO RESOLVED AND DONE** on this \_\_\_\_ day of \_\_\_\_\_, 202\_.

**ATTEST:**

**CITY OF FRANKLIN, TENNESSEE:**

By: \_\_\_\_\_  
**Eric S. Stuckey**  
City Administrator

By: \_\_\_\_\_  
**Dr. Ken Moore**  
Mayor

**Approved as to form:**

By: \_\_\_\_\_  
**William E. Squires**  
Assistant City Attorney



**CITY OF FRANKLIN, TENNESSEE  
PROFESSIONAL SERVICES AGREEMENT  
COF Contract No. 2022-0119**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **BARGE DESIGN SOLUTIONS, INC** hereinafter referenced as Consultant, who mutually agree as follows:

**DECLARATIONS.** The City desires to retain the Consultant to provide engineering and related technical services in connection with the City's project hereinafter referenced as the Project. The Project is described as follows:

**On-Call Traffic Engineering Services**

1. SCOPE OF SERVICES. The Consultant shall provide engineering and related technical services for the Project in accordance with the Scope of Services ("Services") as found in Attachment A, which shall be considered as an integral part hereof.
2. The Consultant shall submit as a part of Attachment A an individual Fee Schedule and a Completion Schedule for the Project based on the detailed Scope of Services.
3. In the event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.
4. The Consultant shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A in the Not to Exceed Amount for Individual Work Orders. Individual Work Orders shall be issued by the City Engineer, approved by the City Administrator, and shall be subject to all terms of this Agreement

The Board of Mayor and Aldermen Approved this Agreement on the \_\_\_\_ Day of \_\_\_\_\_ 20\_\_.

## **TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES**

### **ARTICLE 1. SERVICES.** The Consultant will:

- 1.1 Act for the City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry;
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Designate, in writing, the sole Project representative to coordinate with the City the Services to be provided, including all contact information.
- 1.5 Unless provided for in the Project Scope of Services (Attachment A), the Consultant shall perform all Services with his own forces (employees). Should sub-consultants be proposed to be used in the Project, a listing of said sub-consultants with Services to be performed shall be provided. After approval of this Agreement, no substitute for sub-consultants shall be allowed unless approved by the City.
- 1.6 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by the City at all reasonable times.

### **ARTICLE 2. CITY'S RESPONSIBILITIES.** The City, or its authorized representative, will:

- 2.1 Provide the Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the City.
- 2.2 Furnish right-of-entry onto the Project site for the Consultant's necessary field studies and surveys. The Consultant will endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.
- 2.3 Designate, in writing, the sole Project representative to coordinate with and direct the Consultant, including all contact information.
- 2.4 Guarantee to the Consultant that it has the legal capacity to enter into this contract and that sufficient monies are available to fund the Consultant's compensation.

### **ARTICLE 3. GENERAL CONDITIONS.**

- 3.1 The Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 The Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the Project acting upon written instruction issued by the Consultant.
- 3.3 Neither the City nor the Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party.
- 3.4 ALLOCATION OF RISK AND LIABILITY; GENERAL. Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this Article.

- 3.5 INDEMNIFICATION. The Consultant agrees to indemnify and hold the City harmless from and against legal liability for all claims, judgments, losses, damages, and expenses to the extent such claims, judgments, losses, damages, or expenses are caused by the Consultant's negligent act, error or omission in the performance of the Services of this Agreement. In the event claims, judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of the Consultant and the City, they shall be borne by each party in proportion to its own negligence.

3.5.1 SURVIVAL. The terms and conditions of this paragraph shall survive completion of this services agreement.

- 3.6 LIMITATIONS OF RESPONSIBILITY. The Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, Scope of Services ; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to the City or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to the Consultant in Attachment A, Scope of Services.

**ARTICLE 4. TERMINATION BY THE CITY.** The City may terminate this Agreement in accordance with the following terms and conditions:

- 4.1 TERMINATION FOR CONVENIENCE. The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the Consultant shall stop work when such termination becomes effective. The Consultant shall also terminate outstanding orders and subcontracts for the affected work. The Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Consultant has in its possession or control. When terminated for convenience, the Consultant shall be compensated as follows:

- (1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.
- (2) The City and the Consultant may agree to the compensation, if any, due to the Consultant hereunder.
- (3) Absent agreement to the amount due to the Consultant, the City shall pay the Consultant the following amounts:

- (a) Contract costs for labor, materials, equipment and other services accepted under this Agreement;
  - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the Consultant would have not profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
- (4) The total sum to be paid the Consultant under this Section shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

4.2 TERMINATION FOR CAUSE. If the Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Agreement, then the City, in addition to any other rights it may have against the Consultant or others, may terminate the performance of the Consultant, in whole or in part at the City's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, the Consultant shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Consultant. Otherwise, the Consultant shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Agreement.

In the event the employment of the Consultant is terminated by the City for cause pursuant to this Section and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Section and the provisions of Section 4.1 shall apply.

4.3 TERMINATION FOR NON-APPROPRIATION. The City may also terminate this Agreement, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of such funds, and such termination shall be on the terms of Section 4.1.



- 4.4 The City's rights under this Section shall be in addition to those contained elsewhere herein or provided by law.

**ARTICLE 5. SCOPE OF SERVICES.** The Consultant shall provide the Services as described in Scope of Services attached hereto as Attachment A and incorporated herein by reference.

- 5.1 By mutual agreement, this Agreement and scope can be amended by the parties. The scope and fee for any additional tasks or services under such amendment shall be mutually negotiated and agreed to in writing prior to beginning such additional tasks or services.
- 5.2 ENVIRONMENTAL RESPONSIBILITY. Where drilling/sampling services are involved, the samples obtained from the Project site are the property of the City. Should any of these samples be recognized by the Consultant to be contaminated, the City shall remove them from the Consultant's custody and transport them to a disposal site, all in accordance with applicable government statutes, ordinances, and regulations. For all other samples, the Consultant shall retain them for a sixty (60)-day period following the submission of the drilling/sampling report unless the City directs otherwise; thereafter, the Consultant shall discard the samples in accordance with all federal, state and local laws.

**ARTICLE 6. SCHEDULE.**

- 6.1 TIME OF THE ESSENCE. The parties agree that time is of the essence with respect to the parties' performance of all provisions of the Agreement.
- 6.2 Before executing this Agreement, the Consultant shall have prepared and submitted for approval to the City a Completion Schedule for the Project with milestones for the various stages (tasks) of the Services as outlined in the Scope of Services. The Consultant shall submit and obtain the City's approval for any proposed changes to the logic, durations, sequences, or timing of tasks as approved in the Completion Schedule.
- 6.3 FORCE MAJEURE. Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.
- 6.4 Should the City request changes in the scope, extent, or character of the Project, the fee and the time of performance of the Consultant's Services as indicated in Attachment A shall be adjusted equitably.

**ARTICLE 7. USE OF DOCUMENTS, DATA.**

- 7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by the Consultant pursuant to this Agreement are

instruments of service in respect to the Project. The City shall retain an ownership and property interest therein whether or not the Project is completed.

7.1.1 USE OF DATA SYSTEMS. The City maintains all rights to data systems and data (including derivative or hidden data such as metadata) created and used by the Consultant through information supplied to the Consultant by the City.

7.1.2 DISCLOSURE OF DOCUMENTS/DATA. The City may be required to disclose documents or data under state or federal law. The City shall notify the Consultant if a request for data or documents has been made and shall give the Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. The Consultant waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, the Consultant agrees to indemnify, defend, and hold harmless the City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of the City's reliance upon the Consultant representation that materials supplied by the Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads the Consultant and the Consultant assumes control over that claim.

7.2 By execution of this Agreement, the Consultant and his sub-consultant(s) grant the City a royalty-free, perpetual, irrevocable, and assignable license to use any and all intellectual property interest the Consultant or his sub-consultant(s) possess to any drawings, details, specifications, documents, and other information created before each of their first involvement with the Project and subsequently incorporated into the Project's documents. City-furnished data that may be relied upon by the Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by the City shall be used by the Consultant only for the Project as described herein. The City's posting or publication of such documents created by the Consultant for the City shall constitute fair use and shall not constitute an infringement of the Consultant's copyright, if any.

7.3 Documents that may be relied upon by the City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by the Consultant to the City are only for convenience of the City, unless the delivery of the Project in electronic media format has been dictated in the Scope of Services attached hereto as Attachment A. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.

7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, the Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by the City.

7.5 When transferring documents in electronic media format, the Consultant makes no representations as to long term compatibility, usability, or readability, of documents



resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, the Consultant at the beginning of this Project.

- 7.6 The City may make and retain copies of Documents for information and reference in connection with use on the Project by the City, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by the City or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by the Consultant, as appropriate for the specific purpose intended, will be at the City's sole risk and without liability or legal exposure to the Consultant or to the Consultant's sub-consultants.
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 7.8 Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle the Consultant to further compensation at rates to be agreed upon by the City and the Consultant.

#### **ARTICLE 8. INSURANCE.**

- 8.1 During the performance of the Services under this Agreement, the Consultant shall maintain the following minimum insurance:
  - a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
  - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
  - c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
  - d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 The Consultant shall add the City as an additional insured on all policies unless otherwise prohibited.
- 8.3 The Consultant shall, upon execution of this Agreement, furnish the City with certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty (30) days' written notice to the City.
- 8.4 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. The City agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as the City deems adequate to indemnify the City, the Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

#### **ARTICLE 9. PAYMENT.**

- 9.1 The City will pay the Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope of Services. The Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. The City shall give prompt written notice of any disputed amount and shall pay the remaining amount.

#### **ARTICLE 10. MISCELLANEOUS PROVISIONS**

- 10.1 EQUAL EMPLOYMENT OPPORTUNITY. In connection with this Agreement and the Project, the City and the Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. The City and the Consultant will take affirmative action to ensure that the contractor used for the Project does not discriminate against any employee and employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.1.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.2 TITLE VI – CIVIL RIGHTS ACT OF 1964. The City and the Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.
- 10.2.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.3 NO THIRD-PARTY RIGHTS CREATED. The City and the Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners; to the other party to this Agreement and to their successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement. The Services provided for in this Agreement are for the sole use and benefit of the City and the Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.
- 10.4 WARRANTIES/LIMITATION OF LIABILITY/WAIVER. The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by the Consultant to limit its liability shall be void and unenforceable.

#### **ARTICLE 11. EXTENT OF AGREEMENT:**

- 11.1 APPLICABLE LAW/CHOICE OF FORUM AND VENUE. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.
- 11.2 ENTIRE AGREEMENT. This Agreement, including these terms and conditions, represent the entire Agreement between the City and the Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by the City and the Consultant.

**ARTICLE 12. DISPUTE RESOLUTION, BREACH.**

- 12.1 If a dispute should arise relating to the performance of or payment for the Services under this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to this Agreement. No arbitration or mediation shall be binding.
- 12.2 BREACH. Upon deliberate breach of the Agreement by either party, the non-breaching party shall be entitled to terminate the Agreement with notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

**ARTICLE 13. SURVIVAL.**

The provisions contained in this Professional Services Agreement shall survive the completion of or any termination of the Agreement, contract or other document to which it may accompany or incorporate by reference or which subsequently may be modified, unless expressly excepted from this Article upon consent of both parties.

**THE CITY OF FRANKLIN, TENNESSEE:**

\_\_\_\_\_  
(Signature)

Name: Dr. Ken Moore

Title: Mayor

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

**BARGE DESIGN SOLUTIONS, INC:**

\_\_\_\_\_  
(Signature)

Name: Jonathan D. Haycraft

Title: Sr. Vice President

Date: 1/13/2023

**Attest:**

\_\_\_\_\_  
(Signature)

Eric S. Stuckey  
City Administrator

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

**Approved as to Form:**

\_\_\_\_\_  
William E. Squires, Assistant City Attorney

**ATTACHMENT A**  
**Scope of Work**  
**On-Call Traffic Engineering**  
**Services City of Franklin,**  
**Tennessee**

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Barge Design Solutions, Inc (Consultant) is pleased to provide this proposal for On-Call Traffic Engineering Services to the City of Franklin, TN (City). It is anticipated that this contract will be in effect for a minimum three (3)-year period, with option to extend annually for a maximum of five (5) years. No minimum or maximum contract schedule is guaranteed. The Consultant understands that the City reserves the right to cancel and readvertise for these services at any time.

**I. TRAFFIC ENGINEERING SERVICES – TIA PREPARATION OR REVIEW**

*BACKGROUND*

The City of Franklin Zoning Ordinance provides the requirements for Transportation Impact Analyses (TIA) for development. Therefore, the City has a need for peer review OR preparation of TIAs in conjunction with the Planning/Engineering Department staff review of development applications. Such TIAs may be prepared by the developer requiring peer review from the City Traffic Engineering Consultant under this contract, also known as 3<sup>rd</sup> party review of the TIA. For 3<sup>rd</sup> party peer review, the Consultant shall agree to enter into an agreement with the developer with any fee paid directly from the developer to the Consultant prior to Consultant TIA review, and only after all parties have a signed TIA Memorandum of Understanding (MOU) using the City's standard TIA MOU form. Prior to TIA review, the City shall contact the Consultant to verify participation and availability for 3<sup>rd</sup> party review of the TIA, including participation in a TIA scoping meeting.

In rare cases, larger developments may require the Consultant to develop and prepare the TIA for the developer, as requested by the City. In this case, the Consultant will prepare the full TIA after a signed TIA MOU has been issued, and after negotiation of fee with the developer. The developer will pay the Consultant directly for this work.

*PROJECT MANAGEMENT AND COORDINATION*

The Consultant will manage each TIA review or TIA preparation project for the City of Franklin following all applicable City of Franklin development review processes and standards. At the beginning of the project, the City of Franklin Engineering Staff will hold a scoping meeting with the Consultant and developer to initiate the project and formulate a clear understanding of the project requirements. This meeting will include discussion of the project scope, schedule, communication protocol, and team organization.

The Schedule associated with task 1-3 below shall be based on the City's normal development review process.



#### *TASK 1: INITIAL COORDINATION AND GUIDANCE OF DEVELOPER TIAS*

Development applications, with a significant traffic impact, require a detailed TIA in order to identify needed transportation improvements. Such improvements will need to integrate with the City of Franklin Comprehensive Transportation Network Plan (CTNP), as well as other studies such as the Cool Springs Transportation Study (CSTS) and Goose Creek Coordinated Study. This includes knowledge of multi-modal activities occurring on the transportation network in the development area. The Consultant will have a thorough knowledge of the CTNP, City TIA Guidelines as well as other background or ongoing TIAs that relate to the development proposal. This knowledge will include the scope and schedule of City Capital Improvement Projects or other developer and government agency projects for transportation within the development area. This inventory of data gathering is to facilitate the initial scoping meeting with the developer in accordance with the Zoning Ordinance and TIA Guidelines. The Consultant will attend the initial scoping meeting with the developer and provide available pertinent data as well as give general guidance on scoping meeting items, as defined in the TIA Guidelines.

The developer will submit a Memorandum of Understanding (MOU) to the Consultant, and City staff as requested, based on input received at the initial meeting. The Consultant will answer any questions from the developer during the TIA's formulation of the MOU, and clear final review approval of the MOU with the City Engineering Staff before authorizing the developer to proceed. The Consultant shall also answer any questions from the developer in the process of performing the study.

#### *TASK 2: DETAILED REVIEW OF SUBMITTED TIAs*

The Consultant shall perform a detailed investigation of the submitted TIA. For reference, the final version of the TIA is needed prior to the second submittal in the Design Review Team cycle. This TIA review includes the checking of the basic study assumptions, the inventory data applied, the directional distributions to be used, the trip generation calculations, the technical analyses, and the conclusions and recommendations. The Consultant shall clear with the Engineering staff any corrections and adjustments that would be needed prior to relaying comments on the submitted TIA to the developer. This communication between the Consultant and the City Engineering Staff may take the form of telephone call, e-mail and/or written memorandum.

The Consultant will investigate the recommended TIA improvements in the context of other improvements proposed or planned by government agencies and/or area developments. The Consultant will distinguish between needed on-site versus off-site improvements. The Consultant will make comment on right-of-way constraints and requirements, sight distance issues, ITS elements and multi-modal accommodations as well as travel lanes and traffic controls. Where new turn lane and/or traffic signals are proposed, the consultant will review warrant analysis submitted by the developer for these improvements according to established methods and ensure compliance with the City of Franklin Street Standards and Specifications. In the case of a re-submittal of a TIA that needed revision, the Consultant shall again clear with City Engineering staff the final version before relaying acceptance of the revised TIA to the developer.

### *TASK 3: ESTABLISHMENT OF TIA RECOMMENDATIONS*

The Consultant shall prepare a comprehensive transportation recommendation memorandum for the development's staff report, to include developer obligations for each specific improvement with the associated development stage requirement for completion. The consultant shall provide this memorandum to City Engineering staff for placing the requirements into the staff report, in time for the publication of the staff report for its upcoming FMPC meeting.

When a development with a TIA component is on the agenda for an FMPC and/or BOMA meeting, the Consultant may be required to attend with or on behalf of the Engineering Department staff. The Consultant shall answer any questions of the legislators and applicants and participate in the discussion on the transportation issues as needed.

### *FEE FOR SERVICE*

The Consultant shall negotiate with the developer directly for all fees and tasks associated with this work. The City shall not be invoiced for any of this work.

## **II. GENERAL ON-CALL TRAFFIC ENGINEERING SERVICES**

As determined by City staff, Work Orders shall be mutually agreed upon and the Consultant will help with general traffic engineering services associated with a variety of on-call projects to include, but not be limited to:

- Signal Design
- ITS Design
- Signal Timing
- Warrant Investigations for Signals and Turn Lanes.
- Roadway Design
- Safety Studies
- Transportation Planning and Modeling
- Traffic Data Collection
- Construction Engineering and Inspection

### **Work Order Request Procedure**

- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
- B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
  - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
  - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on the contract anniversary date, based upon the contract



- execution date, for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;
- c. An explanation of how the cost was determined; and
  - d. A schedule for completion of the task, including a completion date.
- C. The City Engineer shall issue an approved and signed Work Order, including the Task Proposal as an attachment, in writing prior to any work being completed.
  - D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
  - E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.



|                  |
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| <b>EXHIBIT B</b> |
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**SCHEDULE OF  
STANDARD CHARGES (October 26, 2022)**

**City of Franklin Traffic Engineering On-Call**

| <b>Labor Category</b>        | <b>Billing Rate</b> |
|------------------------------|---------------------|
| Officer                      | \$ 295.00           |
| Project Director             | \$ 285.00           |
| Senior Project Manager       | \$ 240.00           |
| Project Manager              | \$ 175.10           |
| Sr ITS Traffic Engineer      | \$ 231.75           |
| Sr Traffic Engineer          | \$ 185.40           |
| Jr ITS Traffic Engineer      | \$ 144.20           |
| Jr Traffic Engineer          | \$ 131.84           |
| Sr Traffic Designer          | \$ 174.07           |
| Jr Traffic Designer          | \$ 113.30           |
| Sr Civil Engineer            | \$ 174.07           |
| Jr Civil Engineer            | \$ 135.96           |
| Sr Planner                   | \$ 200.85           |
| Jr Planner                   | \$ 144.20           |
| Principal Geomatics Engineer | \$ 257.50           |
| Sr Geomatics Professional    | \$ 226.60           |
| Jr Geomatics Professional    | \$ 133.90           |
| Sr Surveyor                  | \$ 149.35           |



| Labor Category                       | Billing Rate |
|--------------------------------------|--------------|
| Jr Surveyor                          | \$ 103.00    |
| Sr GIS/Asset Management Professional | \$ 247.20    |
| Jr GIS/Asset Management Professional | \$ 206.00    |
| Information Management Professional  | \$ 108.15    |
| Drone Pilot                          | \$ 159.65    |
| Daily 3D Scanner                     | \$ 103.00    |
| Senior Landscape Architect           | \$ 187.46    |
| Landscape Architect                  | \$ 157.59    |
| Research Specialist                  | \$ 123.60    |
| ADA Roadway Engineer                 | \$ 144.20    |
| Permitting Specialist                | \$ 108.15    |
| Sr Environmental Professional        | \$ 175.10    |
| Jr Environmental Professional        | \$ 122.57    |
| Sr Roadway Engineer                  | \$ 180.25    |
| Sr Bridge Engineer                   | \$ 184.37    |
| Sr Communications Specialist         | \$ 144.20    |
| Jr Communications Specialists        | \$ 103.00    |
| Sr CEI Professional                  | \$ 175.10    |
| Jr CEI Professional                  | \$ 113.30    |
| CADD Technician                      | \$ 113.30    |
| Clerical/Admin                       | \$ 82.40     |

Rates are valid for one year from date contract is signed. An annual escalation of up to 3% may be applied to the contract rates on a yearly basis.

### IRAN DIVESTMENT ACT CERTIFICATION

By submission of a bid or proposal to the City of Franklin, the Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that neither they, nor any assignee of the resulting contract, is on the list created pursuant to T.C.A. § 12-12-106. The Bidder further certifies that it shall not utilize any subcontractor identified on the list created pursuant to T.C.A. § 12-12-106. This list is generated to identify entities ineligible to contract with the State of Tennessee or any political subdivision of the State pursuant to the Iran Divestment Act, T.C.A. §§ 12-12-101 – 113, and the current list may be found at the Tennessee Department of General Services, Central Procurement Office, website under the Public Information Library webpage at the following link:

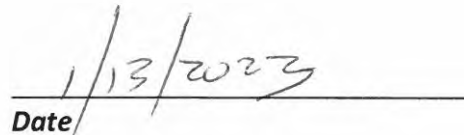
<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>

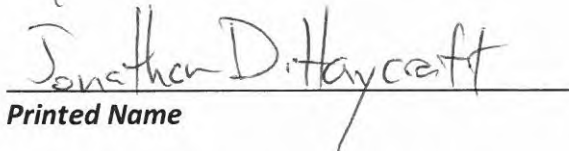
This certification shall not be necessary and shall not apply to contracts valued at one thousand dollars (\$1,000.00) or less.

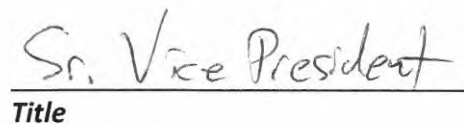
### CERTIFICATION

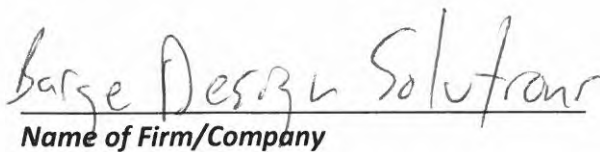
The Bidder certifies that, to the best of its knowledge and belief, it is not on the Iran Divestment Act list as described above.

  
**Signature**

  
**Date**

  
**Printed Name**

  
**Title**

  
**Name of Firm/Company**

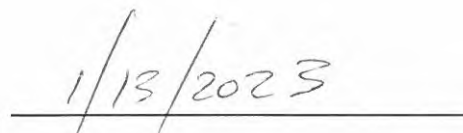
**NON-BOYCOTT OF ISRAEL REQUIREMENTS**

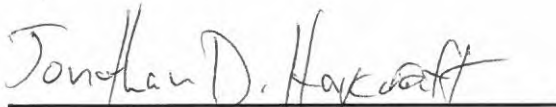
*Tennessee Code Annotated § 12-4-119* (as enacted by Chapter 775 of the Public Acts of 2022) prohibits a public entity from entering into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in, and will not for the duration of the contract engage in, a boycott of Israel. This requirement does not apply to a contract with a total potential value of less than two hundred fifty thousand dollars (\$250,000) or to contractors with less than ten (10) employees.

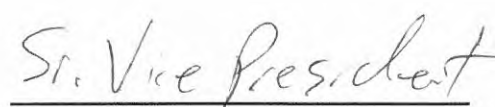
**CERTIFICATION**

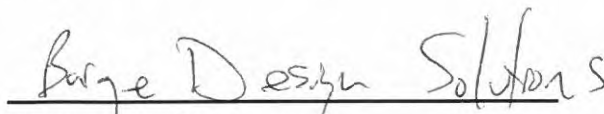
The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119

  
**Signature**

  
**Date**

  
**Printed Name**

  
**Title**

  
**Name of Firm/Company**



**CITY OF FRANKLIN, TENNESSEE  
PROFESSIONAL SERVICES AGREEMENT  
COF Contract No. 2022-0298**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **THE CORRADINO GROUP** hereinafter referenced as Consultant, who mutually agree as follows:

**DECLARATIONS.** The City desires to retain the Consultant to provide engineering and related technical services in connection with the City's project hereinafter referenced as the Project. The Project is described as follows:

**On-Call Traffic Engineering Services**

1. SCOPE OF SERVICES. The Consultant shall provide engineering and related technical services for the Project in accordance with the Scope of Services ("Services") as found in Attachment A, which shall be considered as an integral part hereof.
2. The Consultant shall submit as a part of Attachment A an individual Fee Schedule and a Completion Schedule for the Project based on the detailed Scope of Services.
3. In the event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.
4. The Consultant shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A in the Not to Exceed Amount for Individual Work Orders. Individual Work Orders shall be issued by the City Engineer, approved by the City Administrator, and shall be subject to all terms of this Agreement

The Board of Mayor and Aldermen Approved this Agreement on the \_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_.



## **TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES**

### **ARTICLE 1. SERVICES.** The Consultant will:

- 1.1 Act for the City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry;
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Designate, in writing, the sole Project representative to coordinate with the City the Services to be provided, including all contact information.
- 1.5 Unless provided for in the Project Scope of Services (Attachment A), the Consultant shall perform all Services with his own forces (employees). Should sub-consultants be proposed to be used in the Project, a listing of said sub-consultants with Services to be performed shall be provided. After approval of this Agreement, no substitute for sub-consultants shall be allowed unless approved by the City.
- 1.6 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by the City at all reasonable times.

### **ARTICLE 2. CITY'S RESPONSIBILITIES.** The City, or its authorized representative, will:

- 2.1 Provide the Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the City.
- 2.2 Furnish right-of-entry onto the Project site for the Consultant's necessary field studies and surveys. The Consultant will endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.
- 2.3 Designate, in writing, the sole Project representative to coordinate with and direct the Consultant, including all contact information.
- 2.4 Guarantee to the Consultant that it has the legal capacity to enter into this contract and that sufficient monies are available to fund the Consultant's compensation.

### **ARTICLE 3. GENERAL CONDITIONS.**

- 3.1 The Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 The Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the Project acting upon written instruction issued by the Consultant.
- 3.3 Neither the City nor the Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party.
- 3.4 ALLOCATION OF RISK AND LIABILITY; GENERAL. Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this Article.

3.5 INDEMNIFICATION. The Consultant agrees to indemnify and hold the City harmless from and against legal liability for all claims, judgments, losses, damages, and expenses to the extent such claims, judgments, losses, damages, or expenses are caused by the Consultant's negligent act, error or omission in the performance of the Services of this Agreement. In the event claims, judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of the Consultant and the City, they shall be borne by each party in proportion to its own negligence.

3.5.1 SURVIVAL. The terms and conditions of this paragraph shall survive completion of this services agreement.

3.6 LIMITATIONS OF RESPONSIBILITY. The Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, Scope of Services ; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to the City or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to the Consultant in Attachment A, Scope of Services.

**ARTICLE 4. TERMINATION BY THE CITY.** The City may terminate this Agreement in accordance with the following terms and conditions:

4.1 TERMINATION FOR CONVENIENCE. The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the Consultant shall stop work when such termination becomes effective. The Consultant shall also terminate outstanding orders and subcontracts for the affected work. The Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Consultant has in its possession or control. When terminated for convenience, the Consultant shall be compensated as follows:

- (1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.
- (2) The City and the Consultant may agree to the compensation, if any, due to the Consultant hereunder.
- (3) Absent agreement to the amount due to the Consultant, the City shall pay the Consultant the following amounts:

- (a) Contract costs for labor, materials, equipment and other services accepted under this Agreement;
- (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the Consultant would have not profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
- (4) The total sum to be paid the Consultant under this Section shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- 4.2 TERMINATION FOR CAUSE. If the Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Agreement, then the City, in addition to any other rights it may have against the Consultant or others, may terminate the performance of the Consultant, in whole or in part at the City's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, the Consultant shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Consultant. Otherwise, the Consultant shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Agreement.

In the event the employment of the Consultant is terminated by the City for cause pursuant to this Section and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Section and the provisions of Section 4.1 shall apply.

- 4.3 TERMINATION FOR NON-APPROPRIATION. The City may also terminate this Agreement, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of such funds, and such termination shall be on the terms of Section 4.1.

- 4.4 The City's rights under this Section shall be in addition to those contained elsewhere herein or provided by law.

**ARTICLE 5. SCOPE OF SERVICES.** The Consultant shall provide the Services as described in Scope of Services attached hereto as Attachment A and incorporated herein by reference.

- 5.1 By mutual agreement, this Agreement and scope can be amended by the parties. The scope and fee for any additional tasks or services under such amendment shall be mutually negotiated and agreed to in writing prior to beginning such additional tasks or services.
- 5.2 ENVIRONMENTAL RESPONSIBILITY. Where drilling/sampling services are involved, the samples obtained from the Project site are the property of the City. Should any of these samples be recognized by the Consultant to be contaminated, the City shall remove them from the Consultant's custody and transport them to a disposal site, all in accordance with applicable government statutes, ordinances, and regulations. For all other samples, the Consultant shall retain them for a sixty (60)-day period following the submission of the drilling/sampling report unless the City directs otherwise; thereafter, the Consultant shall discard the samples in accordance with all federal, state and local laws.

**ARTICLE 6. SCHEDULE.**

- 6.1 TIME OF THE ESSENCE. The parties agree that time is of the essence with respect to the parties' performance of all provisions of the Agreement.
- 6.2 Before executing this Agreement, the Consultant shall have prepared and submitted for approval to the City a Completion Schedule for the Project with milestones for the various stages (tasks) of the Services as outlined in the Scope of Services. The Consultant shall submit and obtain the City's approval for any proposed changes to the logic, durations, sequences, or timing of tasks as approved in the Completion Schedule.
- 6.3 FORCE MAJEURE. Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.
- 6.4 Should the City request changes in the scope, extent, or character of the Project, the fee and the time of performance of the Consultant's Services as indicated in Attachment A shall be adjusted equitably.

**ARTICLE 7. USE OF DOCUMENTS, DATA.**

- 7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by the Consultant pursuant to this Agreement are

instruments of service in respect to the Project. The City shall retain an ownership and property interest therein whether or not the Project is completed.

7.1.1 USE OF DATA SYSTEMS. The City maintains all rights to data systems and data (including derivative or hidden data such as metadata) created and used by the Consultant through information supplied to the Consultant by the City.

7.1.2 DISCLOSURE OF DOCUMENTS/DATA. The City may be required to disclose documents or data under state or federal law. The City shall notify the Consultant if a request for data or documents has been made and shall give the Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. The Consultant waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, the Consultant agrees to indemnify, defend, and hold harmless the City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of the City's reliance upon the Consultant representation that materials supplied by the Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads the Consultant and the Consultant assumes control over that claim.

7.2 By execution of this Agreement, the Consultant and his sub-consultant(s) grant the City a royalty-free, perpetual, irrevocable, and assignable license to use any and all intellectual property interest the Consultant or his sub-consultant(s) possess to any drawings, details, specifications, documents, and other information created before each of their first involvement with the Project and subsequently incorporated into the Project's documents. City-furnished data that may be relied upon by the Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by the City shall be used by the Consultant only for the Project as described herein. The City's posting or publication of such documents created by the Consultant for the City shall constitute fair use and shall not constitute an infringement of the Consultant's copyright, if any.

7.3 Documents that may be relied upon by the City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by the Consultant to the City are only for convenience of the City, unless the delivery of the Project in electronic media format has been dictated in the Scope of Services attached hereto as Attachment A. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.

7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, the Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by the City.

7.5 When transferring documents in electronic media format, the Consultant makes no representations as to long term compatibility, usability, or readability, of documents

resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, the Consultant at the beginning of this Project.

- 7.6 The City may make and retain copies of Documents for information and reference in connection with use on the Project by the City, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by the City or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by the Consultant, as appropriate for the specific purpose intended, will be at the City's sole risk and without liability or legal exposure to the Consultant or to the Consultant's sub-consultants.
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 7.8 Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle the Consultant to further compensation at rates to be agreed upon by the City and the Consultant.

#### **ARTICLE 8. INSURANCE.**

- 8.1 During the performance of the Services under this Agreement, the Consultant shall maintain the following minimum insurance:
  - a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
  - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
  - c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
  - d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 The Consultant shall add the City as an additional insured on all policies unless otherwise prohibited.
- 8.3 The Consultant shall, upon execution of this Agreement, furnish the City with certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty (30) days' written notice to the City.
- 8.4 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. The City agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as the City deems adequate to indemnify the City, the Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

#### **ARTICLE 9. PAYMENT.**

- 9.1 The City will pay the Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope of Services. The Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. The City shall give prompt written notice of any disputed amount and shall pay the remaining amount.



#### **ARTICLE 10. MISCELLANEOUS PROVISIONS**

- 10.1 EQUAL EMPLOYMENT OPPORTUNITY. In connection with this Agreement and the Project, the City and the Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. The City and the Consultant will take affirmative action to ensure that the contractor used for the Project does not discriminate against any employee and employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.1.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.2 TITLE VI – CIVIL RIGHTS ACT OF 1964. The City and the Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.
- 10.2.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.3 NO THIRD-PARTY RIGHTS CREATED. The City and the Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to their successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement. The Services provided for in this Agreement are for the sole use and benefit of the City and the Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.
- 10.4 WARRANTIES/LIMITATION OF LIABILITY/WAIVER. The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by the Consultant to limit its liability shall be void and unenforceable.

#### **ARTICLE 11. EXTENT OF AGREEMENT:**

- 11.1 APPLICABLE LAW/CHOICE OF FORUM AND VENUE. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.
- 11.2 ENTIRE AGREEMENT. This Agreement, including these terms and conditions, represent the entire Agreement between the City and the Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by the City and the Consultant.

**ARTICLE 12. DISPUTE RESOLUTION, BREACH.**

- 12.1 If a dispute should arise relating to the performance of or payment for the Services under this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to this Agreement. No arbitration or mediation shall be binding.
- 12.2 BREACH. Upon deliberate breach of the Agreement by either party, the non-breaching party shall be entitled to terminate the Agreement with notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

**ARTICLE 13. SURVIVAL.**

The provisions contained in this Professional Services Agreement shall survive the completion of or any termination of the Agreement, contract or other document to which it may accompany or incorporate by reference or which subsequently may be modified, unless expressly excepted from this Article upon consent of both parties.

**THE CITY OF FRANKLIN, TENNESSEE:**

\_\_\_\_\_  
(Signature)

Name: Dr. Ken Moore

Title: Mayor

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

**THE CORRADINO GROUP:**

Gerald Bolden  
(Signature)

Name: GERALD BOLDEN

Title: VICE PRESIDENT

Date: 1/12/23

**Attest:**

\_\_\_\_\_  
(Signature)

Eric S. Stuckey  
City Administrator

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

**Approved as to Form:**

\_\_\_\_\_  
William E. Squires, Assistant City Attorney

**ATTACHMENT A**  
**Scope of Work**  
**On-Call Traffic Engineering**  
**Services City of Franklin,**  
**Tennessee**

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The Corradino Group (Consultant) is pleased to provide this proposal for On-Call Traffic Engineering Services to the City of Franklin, TN (City). It is anticipated that this contract will be in effect for a minimum three (3)-year period, with option to extend annually for a maximum of five (5) years. No minimum or maximum contract schedule is guaranteed. The Consultant understands that the City reserves the right to cancel and readvertise for these services at any time.

**I. TRAFFIC ENGINEERING SERVICES – TIA PREPARATION OR REVIEW**

*BACKGROUND*

The City of Franklin Zoning Ordinance provides the requirements for Transportation Impact Analyses (TIA) for development. Therefore, the City has a need for peer review OR preparation of TIAs in conjunction with the Planning/Engineering Department staff review of development applications. Such TIAs may be prepared by the developer requiring peer review from the City Traffic Engineering Consultant under this contract, also known as 3<sup>rd</sup> party review of the TIA. For 3<sup>rd</sup> party peer review, the Consultant shall agree to enter into an agreement with the developer with any fee paid directly from the developer to the Consultant prior to Consultant TIA review, and only after all parties have a signed TIA Memorandum of Understanding (MOU) using the City's standard TIA MOU form. Prior to TIA review, the City shall contact the Consultant to verify participation and availability for 3<sup>rd</sup> party review of the TIA, including participation in a TIA scoping meeting.

In rare cases, larger developments may require the Consultant to develop and prepare the TIA for the developer, as requested by the City. In this case, the Consultant will prepare the full TIA after a signed TIA MOU has been issued, and after negotiation of fee with the developer. The developer will pay the Consultant directly for this work.

*PROJECT MANAGEMENT AND COORDINATION*

The Consultant will manage each TIA review or TIA preparation project for the City of Franklin following all applicable City of Franklin development review processes and standards. At the beginning of the project, the City of Franklin Engineering Staff will hold a scoping meeting with the Consultant and developer to initiate the project and formulate a clear understanding of the project requirements. This meeting will include discussion of the project scope, schedule, communication protocol, and team organization.

The Schedule associated with task 1-3 below shall be based on the City's normal development review process.

#### *TASK 1: INITIAL COORDINATION AND GUIDANCE OF DEVELOPER TIAS*

Development applications, with a significant traffic impact, require a detailed TIA in order to identify needed transportation improvements. Such improvements will need to integrate with the City of Franklin Comprehensive Transportation Network Plan (CTNP), as well as other studies such as the Cool Springs Transportation Study (CSTS) and Goose Creek Coordinated Study. This includes knowledge of multi-modal activities occurring on the transportation network in the development area. The Consultant will have a thorough knowledge of the CTNP, City TIA Guidelines as well as other background or ongoing TIAs that relate to the development proposal. This knowledge will include the scope and schedule of City Capital Improvement Projects or other developer and government agency projects for transportation within the development area. This inventory of data gathering is to facilitate the initial scoping meeting with the developer in accordance with the Zoning Ordinance and TIA Guidelines. The Consultant will attend the initial scoping meeting with the developer and provide available pertinent data as well as give general guidance on scoping meeting items, as defined in the TIA Guidelines.

The developer will submit a Memorandum of Understanding (MOU) to the Consultant, and City staff as requested, based on input received at the initial meeting. The Consultant will answer any questions from the developer during the TIA's formulation of the MOU, and clear final review approval of the MOU with the City Engineering Staff before authorizing the developer to proceed. The Consultant shall also answer any questions from the developer in the process of performing the study.

#### *TASK 2: DETAILED REVIEW OF SUBMITTED TIAs*

The Consultant shall perform a detailed investigation of the submitted TIA. For reference, the final version of the TIA is needed prior to the second submittal in the Design Review Team cycle. This TIA review includes the checking of the basic study assumptions, the inventory data applied, the directional distributions to be used, the trip generation calculations, the technical analyses, and the conclusions and recommendations. The Consultant shall clear with the Engineering staff any corrections and adjustments that would be needed prior to relaying comments on the submitted TIA to the developer. This communication between the Consultant and the City Engineering Staff may take the form of telephone call, e-mail and/or written memorandum.

The Consultant will investigate the recommended TIA improvements in the context of other improvements proposed or planned by government agencies and/or area developments. The Consultant will distinguish between needed on-site versus off-site improvements. The Consultant will make comment on right-of-way constraints and requirements, sight distance issues, ITS elements and multi-modal accommodations as well as travel lanes and traffic controls. Where new turn lane and/or traffic signals are proposed, the consultant will review warrant analysis submitted by the developer for these improvements according to established methods and ensure compliance with the City of Franklin Street Standards and Specifications. In the case of a re-submittal of a TIA that needed revision, the Consultant shall again clear with City Engineering staff the final version before relaying acceptance of the revised TIA to the developer.

### *TASK 3: ESTABLISHMENT OF TIA RECOMMENDATIONS*

The Consultant shall prepare a comprehensive transportation recommendation memorandum for the development's staff report, to include developer obligations for each specific improvement with the associated development stage requirement for completion. The consultant shall provide this memorandum to City Engineering staff for placing the requirements into the staff report, in time for the publication of the staff report for its upcoming FMPC meeting.

When a development with a TIA component is on the agenda for an FMPC and/or BOMA meeting, the Consultant may be required to attend with or on behalf of the Engineering Department staff. The Consultant shall answer any questions of the legislators and applicants and participate in the discussion on the transportation issues as needed.

### *FEE FOR SERVICE*

The Consultant shall negotiate with the developer directly for all fees and tasks associated with this work. The City shall not be invoiced for any of this work.

## **II. GENERAL ON-CALL TRAFFIC ENGINEERING SERVICES**

As determined by City staff, Work Orders shall be mutually agreed upon and the Consultant will help with general traffic engineering services associated with a variety of on-call projects to include, but not be limited to:

- Signal Design
- ITS Design
- Signal Timing
- Warrant Investigations for Signals and Turn Lanes.
- Roadway Design
- Safety Studies
- Transportation Planning and Modeling
- Traffic Data Collection
- Construction Engineering and Inspection

### **Work Order Request Procedure**

- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
- B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
  - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
  - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on the contract anniversary date, based upon the contract

execution date, for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;

- c. An explanation of how the cost was determined; and
  - d. A schedule for completion of the task, including a completion date.
- C. The City Engineer shall issue an approved and signed Work Order, including the Task Proposal as an attachment, in writing prior to any work being completed.
  - D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
  - E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.



## EXHIBIT B – FEE SCHEDULE

COF CONTRACT NO. 2022-0298

# THE CORRADINO GROUP, INC.

CORRADINO

ENGINEERS · PLANNERS · PROGRAM MANAGERS · ENVIRONMENTAL SCIENTISTS

October 14, 2022

Mr. Adam Moser  
City Traffic Engineer  
City of Franklin  
109 3<sup>rd</sup> Avenue South, Suite 133  
Franklin, TN 37065

**RE: On-Call Traffic Engineering Services - 2022 Classification Rate Schedule**

Dear Mr. Moser:

Per the City's request, The Corradino Group, Inc. (Corradino) is providing our 2022 Classification Rate Schedule for the above referenced contract. As noted in the Scope of Work, this Professional Services Contract is in effect for a minimum three (3)-year period, with option to extend annually for a maximum of five (5) years. Therefore, we respectfully request a clause within the contract to be able to provide a new rate schedule on each annual contract anniversary.

### 2022 CLASSIFICATION HOURLY RATE SCHEDULE

|                             |          |
|-----------------------------|----------|
| Principal .....             | \$275.00 |
| Project Manager .....       | \$230.00 |
| Senior ITS Engineer.....    | \$225.00 |
| Senior Design Engineer..... | \$220.00 |
| Staff Engineer.....         | \$150.00 |
| Engineer Intern.....        | \$100.00 |
| Senior Planner .....        | \$150.00 |
| Staff Planner .....         | \$115.00 |
| Travel Demand Modeler ..... | \$150.00 |
| Data Collector .....        | \$ 80.00 |
| Designer .....              | \$110.00 |
| Construction Manager .....  | \$195.00 |
| Senior Inspector.....       | \$110.00 |
| Inspector .....             | \$ 95.00 |
| Administrative.....         | \$ 75.00 |

We are excited for the opportunity to work with and serve as an extension of the City of Franklin staff for this contract. Should you have any questions or would like to discuss, please contact me at 615-406-8707 or [gbolden@corradino.com](mailto:gbolden@corradino.com).

Sincerely,  
**THE CORRADINO GROUP, INC.**



Gerald Bolden, PE, PTOE  
Vice President/TN Division Manager

Cc: File

377 RIVERSIDE DRIVE · SUITE 410  
FRANKLIN, TN 37064  
TEL 615.372.6972  
[WWW.CORRADINO.COM](http://WWW.CORRADINO.COM)

### IRAN DIVESTMENT ACT CERTIFICATION

By submission of a bid or proposal to the City of Franklin, the Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that neither they, nor any assignee of the resulting contract, is on the list created pursuant to T.C.A. § 12-12-106. The Bidder further certifies that it shall not utilize any subcontractor identified on the list created pursuant to T.C.A. § 12-12-106. This list is generated to identify entities ineligible to contract with the State of Tennessee or any political subdivision of the State pursuant to the Iran Divestment Act, T.C.A. §§ 12-12-101 – 113, and the current list may be found at the Tennessee Department of General Services, Central Procurement Office, website under the Public Information Library webpage at the following link:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>

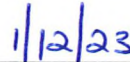
This certification shall not be necessary and shall not apply to contracts valued at one thousand dollars (\$1,000.00) or less.

### CERTIFICATION

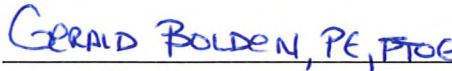
The Bidder certifies that, to the best of its knowledge and belief, it is not on the Iran Divestment Act list as described above.



*Signature*



*Date*



*Printed Name*



*Title*



*Name of Firm/Company*

**NON-BOYCOTT OF ISRAEL REQUIREMENTS**

*Tennessee Code Annotated § 12-4-119* (as enacted by Chapter 775 of the Public Acts of 2022) prohibits a public entity from entering into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in, and will not for the duration of the contract engage in, a boycott of Israel. This requirement does not apply to a contract with a total potential value of less than two hundred fifty thousand dollars (\$250,000) or to contractors with less than ten (10) employees.

**CERTIFICATION**

The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119

Gerald Bolden

**Signature**

1/12/23

**Date**

GERALD BOLDEN, PE, PTOE

**Printed Name**

VICE PRESIDENT

**Title**

THE CORRADIO GROUP

**Name of Firm/Company**

**CITY OF FRANKLIN, TENNESSEE  
PROFESSIONAL SERVICES AGREEMENT  
COF Contract No. 2022-0299**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **KIMLEY-HORN AND ASSOCIATES, INC** hereinafter referenced as Consultant, who mutually agree as follows:

**DECLARATIONS.** The City desires to retain the Consultant to provide engineering and related technical services in connection with the City's project hereinafter referenced as the Project. The Project is described as follows:

**On-Call Traffic Engineering Services**

1. SCOPE OF SERVICES. The Consultant shall provide engineering and related technical services for the Project in accordance with the Scope of Services ("Services") as found in Attachment A, which shall be considered as an integral part hereof.
2. The Consultant shall submit as a part of Attachment A an individual Fee Schedule and a Completion Schedule for the Project based on the detailed Scope of Services.
3. In the event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.
4. The Consultant shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A in the Not to Exceed Amount for Individual Work Orders. Individual Work Orders shall be issued by the City Engineer, approved by the City Administrator, and shall be subject to all terms of this Agreement

The Board of Mayor and Aldermen Approved this Agreement on the \_\_\_\_ Day of \_\_\_\_\_ 20\_\_\_\_.

## **TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES**

### **ARTICLE 1. SERVICES.** The Consultant will:

- 1.1 Act for the City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry:
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Designate, in writing, the sole Project representative to coordinate with the City the Services to be provided, including all contact information.
- 1.5 Unless provided for in the Project Scope of Services (Attachment A), the Consultant shall perform all Services with his own forces (employees). Should sub-consultants be proposed to be used in the Project, a listing of said sub-consultants with Services to be performed shall be provided. After approval of this Agreement, no substitute for sub-consultants shall be allowed unless approved by the City.
- 1.6 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by the City at all reasonable times.

### **ARTICLE 2. CITY'S RESPONSIBILITIES.** The City, or its authorized representative, will:

- 2.1 Provide the Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the City.
- 2.2 Furnish right-of-entry onto the Project site for the Consultant's necessary field studies and surveys. The Consultant will endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.
- 2.3 Designate, in writing, the sole Project representative to coordinate with and direct the Consultant, including all contact information.
- 2.4 Guarantee to the Consultant that it has the legal capacity to enter into this contract and that sufficient monies are available to fund the Consultant's compensation.

### **ARTICLE 3. GENERAL CONDITIONS.**

- 3.1 The Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 The Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the Project acting upon written instruction issued by the Consultant.
- 3.3 Neither the City nor the Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party.
- 3.4 ALLOCATION OF RISK AND LIABILITY; GENERAL. Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this Article.

3.5 INDEMNIFICATION. The Consultant agrees to indemnify and hold the City harmless from and against legal liability for all claims, judgments, losses, damages, and expenses to the extent such claims, judgments, losses, damages, or expenses are caused by the Consultant's negligent act, error or omission in the performance of the Services of this Agreement. In the event claims, judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of the Consultant and the City, they shall be borne by each party in proportion to its own negligence.

3.5.1 SURVIVAL. The terms and conditions of this paragraph shall survive completion of this services agreement.

3.6 LIMITATIONS OF RESPONSIBILITY. The Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, Scope of Services ; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to the City or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to the Consultant in Attachment A, Scope of Services.

**ARTICLE 4. TERMINATION BY THE CITY.** The City may terminate this Agreement in accordance with the following terms and conditions:

4.1 TERMINATION FOR CONVENIENCE. The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the Consultant shall stop work when such termination becomes effective. The Consultant shall also terminate outstanding orders and subcontracts for the affected work. The Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Consultant has in its possession or control. When terminated for convenience, the Consultant shall be compensated as follows:

- (1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.
- (2) The City and the Consultant may agree to the compensation, if any, due to the Consultant hereunder.
- (3) Absent agreement to the amount due to the Consultant, the City shall pay the Consultant the following amounts:



- (a) Contract costs for labor, materials, equipment and other services accepted under this Agreement;
  - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the Consultant would have not profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
- (4) The total sum to be paid the Consultant under this Section shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- 4.2 TERMINATION FOR CAUSE. If the Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Agreement, then the City, in addition to any other rights it may have against the Consultant or others, may terminate the performance of the Consultant, in whole or in part at the City's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, the Consultant shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Consultant. Otherwise, the Consultant shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Agreement.

In the event the employment of the Consultant is terminated by the City for cause pursuant to this Section and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Section and the provisions of Section 4.1 shall apply.

- 4.3 TERMINATION FOR NON-APPROPRIATION. The City may also terminate this Agreement, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of such funds, and such termination shall be on the terms of Section 4.1.

- 4.4 The City's rights under this Section shall be in addition to those contained elsewhere herein or provided by law.

**ARTICLE 5. SCOPE OF SERVICES.** The Consultant shall provide the Services as described in Scope of Services attached hereto as Attachment A and incorporated herein by reference.

- 5.1 By mutual agreement, this Agreement and scope can be amended by the parties. The scope and fee for any additional tasks or services under such amendment shall be mutually negotiated and agreed to in writing prior to beginning such additional tasks or services.
- 5.2 ENVIRONMENTAL RESPONSIBILITY. Where drilling/sampling services are involved, the samples obtained from the Project site are the property of the City. Should any of these samples be recognized by the Consultant to be contaminated, the City shall remove them from the Consultant's custody and transport them to a disposal site, all in accordance with applicable government statutes, ordinances, and regulations. For all other samples, the Consultant shall retain them for a sixty (60)-day period following the submission of the drilling/sampling report unless the City directs otherwise; thereafter, the Consultant shall discard the samples in accordance with all federal, state and local laws.

**ARTICLE 6. SCHEDULE.**

- 6.1 TIME OF THE ESSENCE. The parties agree that time is of the essence with respect to the parties' performance of all provisions of the Agreement.
- 6.2 Before executing this Agreement, the Consultant shall have prepared and submitted for approval to the City a Completion Schedule for the Project with milestones for the various stages (tasks) of the Services as outlined in the Scope of Services. The Consultant shall submit and obtain the City's approval for any proposed changes to the logic, durations, sequences, or timing of tasks as approved in the Completion Schedule.
- 6.3 FORCE MAJEURE. Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.
- 6.4 Should the City request changes in the scope, extent, or character of the Project, the fee and the time of performance of the Consultant's Services as indicated in Attachment A shall be adjusted equitably.

**ARTICLE 7. USE OF DOCUMENTS, DATA.**

- 7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by the Consultant pursuant to this Agreement are

instruments of service in respect to the Project. The City shall retain an ownership and property interest therein whether or not the Project is completed.

7.1.1 USE OF DATA SYSTEMS. The City maintains all rights to data systems and data (including derivative or hidden data such as metadata) created and used by the Consultant through information supplied to the Consultant by the City.

7.1.2 DISCLOSURE OF DOCUMENTS/DATA. The City may be required to disclose documents or data under state or federal law. The City shall notify the Consultant if a request for data or documents has been made and shall give the Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. The Consultant waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, the Consultant agrees to indemnify, defend, and hold harmless the City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of the City's reliance upon the Consultant representation that materials supplied by the Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads the Consultant and the Consultant assumes control over that claim.

7.2 By execution of this Agreement, the Consultant and his sub-consultant(s) grant the City a royalty-free, perpetual, irrevocable, and assignable license to use any and all intellectual property interest the Consultant or his sub-consultant(s) possess to any drawings, details, specifications, documents, and other information created before each of their first involvement with the Project and subsequently incorporated into the Project's documents. City-furnished data that may be relied upon by the Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by the City shall be used by the Consultant only for the Project as described herein. The City's posting or publication of such documents created by the Consultant for the City shall constitute fair use and shall not constitute an infringement of the Consultant's copyright, if any.

7.3 Documents that may be relied upon by the City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by the Consultant to the City are only for convenience of the City, unless the delivery of the Project in electronic media format has been dictated in the Scope of Services attached hereto as Attachment A. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.

7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, the Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by the City.

7.5 When transferring documents in electronic media format, the Consultant makes no representations as to long term compatibility, usability, or readability, of documents

resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, the Consultant at the beginning of this Project.

- 7.6 The City may make and retain copies of Documents for information and reference in connection with use on the Project by the City, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by the City or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by the Consultant, as appropriate for the specific purpose intended, will be at the City's sole risk and without liability or legal exposure to the Consultant or to the Consultant's sub-consultants.
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 7.8 Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle the Consultant to further compensation at rates to be agreed upon by the City and the Consultant.

#### **ARTICLE 8. INSURANCE.**

- 8.1 During the performance of the Services under this Agreement, the Consultant shall maintain the following minimum insurance:
  - a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
  - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
  - c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
  - d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 The Consultant shall add the City as an additional insured on all policies unless otherwise prohibited.
- 8.3 The Consultant shall, upon execution of this Agreement, furnish the City with certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty (30) days' written notice to the City.
- 8.4 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. The City agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as the City deems adequate to indemnify the City, the Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

#### **ARTICLE 9. PAYMENT.**

- 9.1 The City will pay the Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope of Services. The Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. The City shall give prompt written notice of any disputed amount and shall pay the remaining amount.

#### **ARTICLE 10. MISCELLANEOUS PROVISIONS**

- 10.1 EQUAL EMPLOYMENT OPPORTUNITY. In connection with this Agreement and the Project, the City and the Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. The City and the Consultant will take affirmative action to ensure that the contractor used for the Project does not discriminate against any employee and employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.1.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.2 TITLE VI – CIVIL RIGHTS ACT OF 1964. The City and the Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.
- 10.2.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.3 NO THIRD-PARTY RIGHTS CREATED. The City and the Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to their successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement. The Services provided for in this Agreement are for the sole use and benefit of the City and the Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.
- 10.4 WARRANTIES/LIMITATION OF LIABILITY/WAIVER. The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by the Consultant to limit its liability shall be void and unenforceable.

#### **ARTICLE 11. EXTENT OF AGREEMENT:**

- 11.1 APPLICABLE LAW/CHOICE OF FORUM AND VENUE. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.
- 11.2 ENTIRE AGREEMENT. This Agreement, including these terms and conditions, represent the entire Agreement between the City and the Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by the City and the Consultant.

**ARTICLE 12. DISPUTE RESOLUTION, BREACH.**

- 12.1 If a dispute should arise relating to the performance of or payment for the Services under this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to this Agreement. No arbitration or mediation shall be binding.
- 12.2 BREACH. Upon deliberate breach of the Agreement by either party, the non-breaching party shall be entitled to terminate the Agreement with notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

**ARTICLE 13. SURVIVAL.**

The provisions contained in this Professional Services Agreement shall survive the completion of or any termination of the Agreement, contract or other document to which it may accompany or incorporate by reference or which subsequently may be modified, unless expressly excepted from this Article upon consent of both parties.

**THE CITY OF FRANKLIN, TENNESSEE:**

\_\_\_\_\_  
(Signature)

Name: Dr. Ken Moore

Title: Mayor

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

**KIMLEY-HORN AND ASSOCIATES, INC:**

\_\_\_\_\_  
(Signature)

Name: LEO ESPELET

Title: VICE PRESIDENT

Date: 01/11/2023

**Attest:**

\_\_\_\_\_  
(Signature)

Eric S. Stuckey  
City Administrator

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

**Approved as to Form:**

\_\_\_\_\_  
William E. Squires, Assistant City Attorney



**ATTACHMENT A**  
**Scope of Work**  
**On-Call Traffic Engineering**  
**Services City of Franklin,**  
**Tennessee**

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Kimley-Horn and Associates, Inc (Consultant) is pleased to provide this proposal for On-Call Traffic Engineering Services to the City of Franklin, TN (City). It is anticipated that this contract will be in effect for a minimum three (3)-year period, with option to extend annually for a maximum of five (5) years. No minimum or maximum contract schedule is guaranteed. The Consultant understands that the City reserves the right to cancel and readvertise for these services at any time.

**I. TRAFFIC ENGINEERING SERVICES – TIA PREPARATION OR REVIEW**

*BACKGROUND*

The City of Franklin Zoning Ordinance provides the requirements for Transportation Impact Analyses (TIA) for development. Therefore, the City has a need for peer review OR preparation of TIAs in conjunction with the Planning/Engineering Department staff review of development applications. Such TIAs may be prepared by the developer requiring peer review from the City Traffic Engineering Consultant under this contract, also known as 3<sup>rd</sup> party review of the TIA. For 3<sup>rd</sup> party peer review, the Consultant shall agree to enter into an agreement with the developer with any fee paid directly from the developer to the Consultant prior to Consultant TIA review, and only after all parties have a signed TIA Memorandum of Understanding (MOU) using the City's standard TIA MOU form. Prior to TIA review, the City shall contact the Consultant to verify participation and availability for 3<sup>rd</sup> party review of the TIA, including participation in a TIA scoping meeting.

In rare cases, larger developments may require the Consultant to develop and prepare the TIA for the developer, as requested by the City. In this case, the Consultant will prepare the full TIA after a signed TIA MOU has been issued, and after negotiation of fee with the developer. The developer will pay the Consultant directly for this work.

*PROJECT MANAGEMENT AND COORDINATION*

The Consultant will manage each TIA review or TIA preparation project for the City of Franklin following all applicable City of Franklin development review processes and standards. At the beginning of the project, the City of Franklin Engineering Staff will hold a scoping meeting with the Consultant and developer to initiate the project and formulate a clear understanding of the project requirements. This meeting will include discussion of the project scope, schedule, communication protocol, and team organization.

The Schedule associated with task 1-3 below shall be based on the City's normal development review process.

#### *TASK 1: INITIAL COORDINATION AND GUIDANCE OF DEVELOPER TIAS*

Development applications, with a significant traffic impact, require a detailed TIA in order to identify needed transportation improvements. Such improvements will need to integrate with the City of Franklin Comprehensive Transportation Network Plan (CTNP), as well as other studies such as the Cool Springs Transportation Study (CSTS) and Goose Creek Coordinated Study. This includes knowledge of multi-modal activities occurring on the transportation network in the development area. The Consultant will have a thorough knowledge of the CTNP, City TIA Guidelines as well as other background or ongoing TIAs that relate to the development proposal. This knowledge will include the scope and schedule of City Capital Improvement Projects or other developer and government agency projects for transportation within the development area. This inventory of data gathering is to facilitate the initial scoping meeting with the developer in accordance with the Zoning Ordinance and TIA Guidelines. The Consultant will attend the initial scoping meeting with the developer and provide available pertinent data as well as give general guidance on scoping meeting items, as defined in the TIA Guidelines.

The developer will submit a Memorandum of Understanding (MOU) to the Consultant, and City staff as requested, based on input received at the initial meeting. The Consultant will answer any questions from the developer during the TIA's formulation of the MOU, and clear final review approval of the MOU with the City Engineering Staff before authorizing the developer to proceed. The Consultant shall also answer any questions from the developer in the process of performing the study.

#### *TASK 2: DETAILED REVIEW OF SUBMITTED TIAs*

The Consultant shall perform a detailed investigation of the submitted TIA. For reference, the final version of the TIA is needed prior to the second submittal in the Design Review Team cycle. This TIA review includes the checking of the basic study assumptions, the inventory data applied, the directional distributions to be used, the trip generation calculations, the technical analyses, and the conclusions and recommendations. The Consultant shall clear with the Engineering staff any corrections and adjustments that would be needed prior to relaying comments on the submitted TIA to the developer. This communication between the Consultant and the City Engineering Staff may take the form of telephone call, e-mail and/or written memorandum.

The Consultant will investigate the recommended TIA improvements in the context of other improvements proposed or planned by government agencies and/or area developments. The Consultant will distinguish between needed on-site versus off-site improvements. The Consultant will make comment on right-of-way constraints and requirements, sight distance issues, ITS elements and multi-modal accommodations as well as travel lanes and traffic controls. Where new turn lane and/or traffic signals are proposed, the consultant will review warrant analysis submitted by the developer for these improvements according to established methods and ensure compliance with the City of Franklin Street Standards and Specifications. In the case of a re-submittal of a TIA that needed revision, the Consultant shall again clear with City Engineering staff the final version before relaying acceptance of the revised TIA to the developer.

### *TASK 3: ESTABLISHMENT OF TIA RECOMMENDATIONS*

The Consultant shall prepare a comprehensive transportation recommendation memorandum for the development's staff report, to include developer obligations for each specific improvement with the associated development stage requirement for completion. The consultant shall provide this memorandum to City Engineering staff for placing the requirements into the staff report, in time for the publication of the staff report for its upcoming FMPC meeting.

When a development with a TIA component is on the agenda for an FMPC and/or BOMA meeting, the Consultant may be required to attend with or on behalf of the Engineering Department staff. The Consultant shall answer any questions of the legislators and applicants and participate in the discussion on the transportation issues as needed.

### *FEE FOR SERVICE*

The Consultant shall negotiate with the developer directly for all fees and tasks associated with this work. The City shall not be invoiced for any of this work.

## **II. GENERAL ON-CALL TRAFFIC ENGINEERING SERVICES**

As determined by City staff, Work Orders shall be mutually agreed upon and the Consultant will help with general traffic engineering services associated with a variety of on-call projects to include, but not be limited to:

- Signal Design
- ITS Design
- Signal Timing
- Warrant Investigations for Signals and Turn Lanes.
- Roadway Design
- Safety Studies
- Transportation Planning and Modeling
- Traffic Data Collection
- Construction Engineering and Inspection

### **Work Order Request Procedure**

- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
- B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
  - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
  - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to

become effective on the contract anniversary date, based upon the contract execution date, for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;

- c. An explanation of how the cost was determined; and
  - d. A schedule for completion of the task, including a completion date.
- C. The City Engineer shall issue an approved and signed Work Order, including the Task Proposal as an attachment, in writing prior to any work being completed.
- D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
- E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.

**Kimley-Horn and Associates, Inc. (Prime Consultant)**
**Hourly Rate Schedule**

*(Effective upon contract execution for 12 months,  
subject to annual adjustment each additional year)*

| Classification / Description | Rate  |
|------------------------------|-------|
| Designer                     | \$130 |
| Senior Designer              | \$160 |
| Analyst                      | \$155 |
| Senior Analyst               | \$175 |
| Professional                 | \$215 |
| Senior Professional I        | \$240 |
| Senior Professional II       | \$265 |
| Project Manager              | \$295 |
| Principal                    | \$310 |
| Administrative               | \$100 |
| Senior Administrative        | \$115 |

### IRAN DIVESTMENT ACT CERTIFICATION

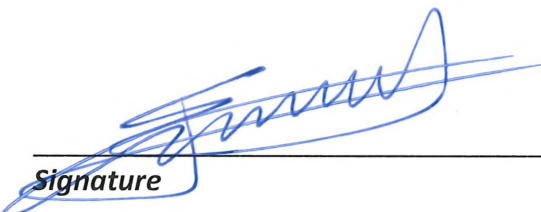
By submission of a bid or proposal to the City of Franklin, the Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that neither they, nor any assignee of the resulting contract, is on the list created pursuant to T.C.A. § 12-12-106. The Bidder further certifies that it shall not utilize any subcontractor identified on the list created pursuant to T.C.A. § 12-12-106. This list is generated to identify entities ineligible to contract with the State of Tennessee or any political subdivision of the State pursuant to the Iran Divestment Act, T.C.A. §§ 12-12-101 – 113, and the current list may be found at the Tennessee Department of General Services, Central Procurement Office, website under the Public Information Library webpage at the following link:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>

This certification shall not be necessary and shall not apply to contracts valued at one thousand dollars (\$1,000.00) or less.

### CERTIFICATION

The Bidder certifies that, to the best of its knowledge and belief, it is not on the Iran Divestment Act list as described above.

  
\_\_\_\_\_  
*Signature*

1/11/2023  
\_\_\_\_\_  
*Date*

LEO ESPELET  
\_\_\_\_\_  
*Printed Name*

VICE PRESIDENT  
\_\_\_\_\_  
*Title*

KIMLEY-HORN AND ASSOCIATES  
\_\_\_\_\_  
*Name of Firm/Company*

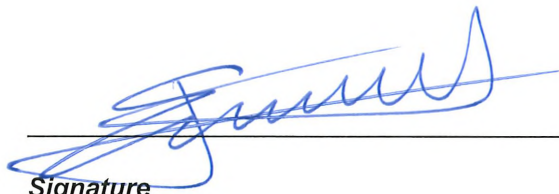


**NON-BOYCOTT OF ISRAEL REQUIREMENTS**

*Tennessee Code Annotated* § 12-4-119 (as enacted by Chapter 775 of the Public Acts of 2022) prohibits a public entity from entering into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in, and will not for the duration of the contract engage in, a boycott of Israel. This requirement does not apply to a contract with a total potential value of less than two hundred fifty thousand dollars (\$250,000) or to contractors with less than ten (10) employees.

**CERTIFICATION**

The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119

  
\_\_\_\_\_  
Signature

1/11/2023  
\_\_\_\_\_  
Date

LEO ESPELET  
\_\_\_\_\_  
Printed Name

VICE PRESIDENT  
\_\_\_\_\_  
Title

KIMLEY-HORN AND ASSOCIATES  
\_\_\_\_\_  
Name of Firm/Company

**CITY OF FRANKLIN, TENNESSEE  
PROFESSIONAL SERVICES AGREEMENT  
COF Contract No. 2022-0300**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **NEEL-SCHAFER, INC** hereinafter referenced as Consultant, who mutually agree as follows:

**DECLARATIONS.** The City desires to retain the Consultant to provide engineering and related technical services in connection with the City's project hereinafter referenced as the Project. The Project is described as follows:

**On-Call Traffic Engineering Services**

1. SCOPE OF SERVICES. The Consultant shall provide engineering and related technical services for the Project in accordance with the Scope of Services ("Services") as found in Attachment A, which shall be considered as an integral part hereof.
2. The Consultant shall submit as a part of Attachment A an individual Fee Schedule and a Completion Schedule for the Project based on the detailed Scope of Services.
3. In the event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.
4. The Consultant shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A in the Not to Exceed Amount for Individual Work Orders. Individual Work Orders shall be issued by the City Engineer, approved by the City Administrator, and shall be subject to all terms of this Agreement

**The Board of Mayor and Aldermen Approved this Agreement on the \_\_\_\_Day of  
\_\_\_\_\_, 20\_\_\_\_.**

## **TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES**

### **ARTICLE 1. SERVICES.** The Consultant will:

- 1.1 Act for the City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry:
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Designate, in writing, the sole Project representative to coordinate with the City the Services to be provided, including all contact information.
- 1.5 Unless provided for in the Project Scope of Services (Attachment A), the Consultant shall perform all Services with his own forces (employees). Should sub-consultants be proposed to be used in the Project, a listing of said sub-consultants with Services to be performed shall be provided. After approval of this Agreement, no substitute for sub-consultants shall be allowed unless approved by the City.
- 1.6 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by the City at all reasonable times.

### **ARTICLE 2. CITY'S RESPONSIBILITIES.** The City, or its authorized representative, will:

- 2.1 Provide the Consultant with all information regarding the Project, which is available to, or reasonably obtainable by, the City.
- 2.2 Furnish right-of-entry onto the Project site for the Consultant's necessary field studies and surveys. The Consultant will endeavor to restore the site to its original condition and shall remain solely liable for all damages, costs and expenses, including reasonable attorneys' fees, for failure to make such restoration.
- 2.3 Designate, in writing, the sole Project representative to coordinate with and direct the Consultant, including all contact information.
- 2.4 Guarantee to the Consultant that it has the legal capacity to enter into this contract and that sufficient monies are available to fund the Consultant's compensation.

### **ARTICLE 3. GENERAL CONDITIONS.**

- 3.1 The Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 The Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the Project acting upon written instruction issued by the Consultant.
- 3.3 Neither the City nor the Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party.
- 3.4 ALLOCATION OF RISK AND LIABILITY; GENERAL. Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this Article.

- 3.5 INDEMNIFICATION. The Consultant agrees to indemnify and hold the City harmless from and against legal liability for all claims, judgments, losses, damages, and expenses to the extent such claims, judgments, losses, damages, or expenses are caused by the Consultant's negligent act, error or omission in the performance of the Services of this Agreement. In the event claims, judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of the Consultant and the City, they shall be borne by each party in proportion to its own negligence.

3.5.1 SURVIVAL. The terms and conditions of this paragraph shall survive completion of this services agreement.

- 3.6 LIMITATIONS OF RESPONSIBILITY. The Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project unless specifically undertaken in Attachment A, Scope of Services ; (b) the failure of any contractor, subcontractor, Consultant, or other Project participant, not under contract to Consultant, to fulfill contractual responsibilities to the City or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to the Consultant in Attachment A, Scope of Services.

**ARTICLE 4. TERMINATION BY THE CITY.** The City may terminate this Agreement in accordance with the following terms and conditions:

- 4.1 TERMINATION FOR CONVENIENCE. The City may, when in the interests of the City, terminate performance under this Agreement with the Consultant, in whole or in part, for the convenience of the City. The City shall give written notice of such termination to the Consultant specifying when termination becomes effective. The Consultant shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the Consultant shall stop work when such termination becomes effective. The Consultant shall also terminate outstanding orders and subcontracts for the affected work. The Consultant shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Consultant to assign the Consultant's right, title and interest under termination orders or subcontracts to the City or its designee. The Consultant shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Consultant has in its possession or control. When terminated for convenience, the Consultant shall be compensated as follows:

- (1) The Consultant shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Consultant fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Consultant the amount the City deems the Consultant is due.
- (2) The City and the Consultant may agree to the compensation, if any, due to the Consultant hereunder.
- (3) Absent agreement to the amount due to the Consultant, the City shall pay the Consultant the following amounts:

- (a) Contract costs for labor, materials, equipment and other services accepted under this Agreement;
  - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Consultant's performance, plus a fair and reasonable allowance for direct job site overhead and earned profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it reasonably appears that the Consultant would have not profited or would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
- (4) The total sum to be paid the Consultant under this Section shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

4.2 TERMINATION FOR CAUSE. If the Consultant does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Agreement, then the City, in addition to any other rights it may have against the Consultant or others, may terminate the performance of the Consultant, in whole or in part at the City's sole option, and assume possession of the Project Plans and materials and may complete the work.

In such case, the Consultant shall not be paid further until the work is complete. After Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Consultant. Otherwise, the Consultant shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Agreement.

In the event the employment of the Consultant is terminated by the City for cause pursuant to this Section and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Section and the provisions of Section 4.1 shall apply.

4.3 TERMINATION FOR NON-APPROPRIATION. The City may also terminate this Agreement, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project, regardless of the source of such funds, and such termination shall be on the terms of Section 4.1.

- 4.4 The City's rights under this Section shall be in addition to those contained elsewhere herein or provided by law.

**ARTICLE 5. SCOPE OF SERVICES.** The Consultant shall provide the Services as described in Scope of Services attached hereto as Attachment A and incorporated herein by reference.

- 5.1 By mutual agreement, this Agreement and scope can be amended by the parties. The scope and fee for any additional tasks or services under such amendment shall be mutually negotiated and agreed to in writing prior to beginning such additional tasks or services.
- 5.2 ENVIRONMENTAL RESPONSIBILITY. Where drilling/sampling services are involved, the samples obtained from the Project site are the property of the City. Should any of these samples be recognized by the Consultant to be contaminated, the City shall remove them from the Consultant's custody and transport them to a disposal site, all in accordance with applicable government statutes, ordinances, and regulations. For all other samples, the Consultant shall retain them for a sixty (60)-day period following the submission of the drilling/sampling report unless the City directs otherwise; thereafter, the Consultant shall discard the samples in accordance with all federal, state and local laws.

**ARTICLE 6. SCHEDULE.**

- 6.1 TIME OF THE ESSENCE. The parties agree that time is of the essence with respect to the parties' performance of all provisions of the Agreement.
- 6.2 Before executing this Agreement, the Consultant shall have prepared and submitted for approval to the City a Completion Schedule for the Project with milestones for the various stages (tasks) of the Services as outlined in the Scope of Services. The Consultant shall submit and obtain the City's approval for any proposed changes to the logic, durations, sequences, or timing of tasks as approved in the Completion Schedule.
- 6.3 FORCE MAJEURE. Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.
- 6.4 Should the City request changes in the scope, extent, or character of the Project, the fee and the time of performance of the Consultant's Services as indicated in Attachment A shall be adjusted equitably.

**ARTICLE 7. USE OF DOCUMENTS, DATA.**

- 7.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by the Consultant pursuant to this Agreement are



instruments of service in respect to the Project. The City shall retain an ownership and property interest therein whether or not the Project is completed.

7.1.1 USE OF DATA SYSTEMS. The City maintains all rights to data systems and data (including derivative or hidden data such as metadata) created and used by the Consultant through information supplied to the Consultant by the City.

7.1.2 DISCLOSURE OF DOCUMENTS/DATA. The City may be required to disclose documents or data under state or federal law. The City shall notify the Consultant if a request for data or documents has been made and shall give the Consultant a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. The Consultant waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, the Consultant agrees to indemnify, defend, and hold harmless the City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of the City's reliance upon the Consultant representation that materials supplied by the Consultant (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads the Consultant and the Consultant assumes control over that claim.

7.2 By execution of this Agreement, the Consultant and his sub-consultant(s) grant the City a royalty-free, perpetual, irrevocable, and assignable license to use any and all intellectual property interest the Consultant or his sub-consultant(s) possess to any drawings, details, specifications, documents, and other information created before each of their first involvement with the Project and subsequently incorporated into the Project's documents. City-furnished data that may be relied upon by the Consultant is limited to the printed copies that are delivered to the Consultant pursuant to Article 2 of this Agreement. Any copyrighted electronic files furnished by the City shall be used by the Consultant only for the Project as described herein. The City's posting or publication of such documents created by the Consultant for the City shall constitute fair use and shall not constitute an infringement of the Consultant's copyright, if any.

7.3 Documents that may be relied upon by the City are limited to the printed copies (also known as hard copies) that are signed or sealed by the Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by the Consultant to the City are only for convenience of the City, unless the delivery of the Project in electronic media format has been dictated in the Scope of Services attached hereto as Attachment A. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.

7.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, the Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by the City.

7.5 When transferring documents in electronic media format, the Consultant makes no representations as to long term compatibility, usability, or readability, of documents

resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, the Consultant at the beginning of this Project.

- 7.6 The City may make and retain copies of Documents for information and reference in connection with use on the Project by the City, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by the City or others on extensions of the Project or on any other project. Any such reuse or modifications without written verification or adaptation by the Consultant, as appropriate for the specific purpose intended, will be at the City's sole risk and without liability or legal exposure to the Consultant or to the Consultant's sub-consultants.
- 7.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 7.8 Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle the Consultant to further compensation at rates to be agreed upon by the City and the Consultant.

#### **ARTICLE 8. INSURANCE.**

- 8.1 During the performance of the Services under this Agreement, the Consultant shall maintain the following minimum insurance:
  - a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
  - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
  - c) Workers' Compensation Insurance Coverage A in accordance with statutory requirements and Coverage B, Employer's Liability Insurance, with a limit of \$500,000 for each occurrence.
  - d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 8.2 The Consultant shall add the City as an additional insured on all policies unless otherwise prohibited.
- 8.3 The Consultant shall, upon execution of this Agreement, furnish the City with certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty (30) days' written notice to the City.
- 8.4 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the Project. The City agrees to include, or cause to be included, in the Project's construction contract, such requirements for insurance coverage and performance bonds by the Project's construction contractor as the City deems adequate to indemnify the City, the Consultant, and other concerned parties against claims for damages and to insure compliance of work performance and materials with Project requirements.

#### **ARTICLE 9. PAYMENT.**

- 9.1 The City will pay the Consultant for services and expenses in accordance with the Fee Schedule proposal submitted for the Project as part of the Scope of Services. The Consultant's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. The City shall give prompt written notice of any disputed amount and shall pay the remaining amount.

## **ARTICLE 10. MISCELLANEOUS PROVISIONS**

- 10.1 EQUAL EMPLOYMENT OPPORTUNITY. In connection with this Agreement and the Project, the City and the Consultant shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. The City and the Consultant will take affirmative action to ensure that the contractor used for the Project does not discriminate against any employee and employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.1.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.2 TITLE VI – CIVIL RIGHTS ACT OF 1964. The City and the Consultant shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.
- 10.2.1 The Consultant shall insert the foregoing provision in all contracts relating to this Project.
- 10.3 NO THIRD-PARTY RIGHTS CREATED. The City and the Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to their successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement. The Services provided for in this Agreement are for the sole use and benefit of the City and the Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.
- 10.4 WARRANTIES/LIMITATION OF LIABILITY/WAIVER. The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by the Consultant to limit its liability shall be void and unenforceable.

## **ARTICLE 11. EXTENT OF AGREEMENT:**

- 11.1 APPLICABLE LAW/CHOICE OF FORUM AND VENUE. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.
- 11.2 ENTIRE AGREEMENT. This Agreement, including these terms and conditions, represent the entire Agreement between the City and the Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by the City and the Consultant.

**ARTICLE 12. DISPUTE RESOLUTION, BREACH.**

- 12.1 If a dispute should arise relating to the performance of or payment for the Services under this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to this Agreement. No arbitration or mediation shall be binding.
- 12.2 BREACH. Upon deliberate breach of the Agreement by either party, the non-breaching party shall be entitled to terminate the Agreement with notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

**ARTICLE 13. SURVIVAL.**

The provisions contained in this Professional Services Agreement shall survive the completion of or any termination of the Agreement, contract or other document to which it may accompany or incorporate by reference or which subsequently may be modified, unless expressly excepted from this Article upon consent of both parties.

**THE CITY OF FRANKLIN, TENNESSEE:**

\_\_\_\_\_  
(Signature)

Name: Dr. Ken Moore

Title: Mayor

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

**Neel-Schaffer, Inc:**

\_\_\_\_\_  
(Signature)

Name: Gregory D. Judy, P.E., PTOE

Title: Vice President / Engineer Manager

Date: 01/11/2023

**Attest:**

\_\_\_\_\_  
(Signature)

Eric S. Stuckey  
City Administrator

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

**Approved as to Form:**

\_\_\_\_\_  
William E. Squires, Assistant City Attorney

**ATTACHMENT A**  
**Scope of Work**  
**On-Call Traffic Engineering**  
**Services City of Franklin,**  
**Tennessee**

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Neel-Schaffer, Inc (Consultant) is pleased to provide this proposal for On-Call Traffic Engineering Services to the City of Franklin, TN (City). It is anticipated that this contract will be in effect for a minimum three (3)-year period, with option to extend annually for a maximum of five (5) years. No minimum or maximum contract schedule is guaranteed. The Consultant understands that the City reserves the right to cancel and readvertise for these services at any time.

**I. TRAFFIC ENGINEERING SERVICES – TIA PREPARATION OR REVIEW**

*BACKGROUND*

The City of Franklin Zoning Ordinance provides the requirements for Transportation Impact Analyses (TIA) for development. Therefore, the City has a need for peer review OR preparation of TIAs in conjunction with the Planning/Engineering Department staff review of development applications. Such TIAs may be prepared by the developer requiring peer review from the City Traffic Engineering Consultant under this contract, also known as 3<sup>rd</sup> party review of the TIA. For 3<sup>rd</sup> party peer review, the Consultant shall agree to enter into an agreement with the developer with any fee paid directly from the developer to the Consultant prior to Consultant TIA review, and only after all parties have a signed TIA Memorandum of Understanding (MOU) using the City's standard TIA MOU form. Prior to TIA review, the City shall contact the Consultant to verify participation and availability for 3<sup>rd</sup> party review of the TIA, including participation in a TIA scoping meeting.

In rare cases, larger developments may require the Consultant to develop and prepare the TIA for the developer, as requested by the City. In this case, the Consultant will prepare the full TIA after a signed TIA MOU has been issued, and after negotiation of fee with the developer. The developer will pay the Consultant directly for this work.

*PROJECT MANAGEMENT AND COORDINATION*

The Consultant will manage each TIA review or TIA preparation project for the City of Franklin following all applicable City of Franklin development review processes and standards. At the beginning of the project, the City of Franklin Engineering Staff will hold a scoping meeting with the Consultant and developer to initiate the project and formulate a clear understanding of the project requirements. This meeting will include discussion of the project scope, schedule, communication protocol, and team organization.

The Schedule associated with task 1-3 below shall be based on the City's normal development review process.

#### *TASK 1: INITIAL COORDINATION AND GUIDANCE OF DEVELOPER TIAS*

Development applications, with a significant traffic impact, require a detailed TIA in order to identify needed transportation improvements. Such improvements will need to integrate with the City of Franklin Comprehensive Transportation Network Plan (CTNP), as well as other studies such as the Cool Springs Transportation Study (CSTS) and Goose Creek Coordinated Study. This includes knowledge of multi-modal activities occurring on the transportation network in the development area. The Consultant will have a thorough knowledge of the CTNP, City TIA Guidelines as well as other background or ongoing TIAs that relate to the development proposal. This knowledge will include the scope and schedule of City Capital Improvement Projects or other developer and government agency projects for transportation within the development area. This inventory of data gathering is to facilitate the initial scoping meeting with the developer in accordance with the Zoning Ordinance and TIA Guidelines. The Consultant will attend the initial scoping meeting with the developer and provide available pertinent data as well as give general guidance on scoping meeting items, as defined in the TIA Guidelines.

The developer will submit a Memorandum of Understanding (MOU) to the Consultant, and City staff as requested, based on input received at the initial meeting. The Consultant will answer any questions from the developer during the TIA's formulation of the MOU, and clear final review approval of the MOU with the City Engineering Staff before authorizing the developer to proceed. The Consultant shall also answer any questions from the developer in the process of performing the study.

#### *TASK 2: DETAILED REVIEW OF SUBMITTED TIAs*

The Consultant shall perform a detailed investigation of the submitted TIA. For reference, the final version of the TIA is needed prior to the second submittal in the Design Review Team cycle. This TIA review includes the checking of the basic study assumptions, the inventory data applied, the directional distributions to be used, the trip generation calculations, the technical analyses, and the conclusions and recommendations. The Consultant shall clear with the Engineering staff any corrections and adjustments that would be needed prior to relaying comments on the submitted TIA to the developer. This communication between the Consultant and the City Engineering Staff may take the form of telephone call, e-mail and/or written memorandum.

The Consultant will investigate the recommended TIA improvements in the context of other improvements proposed or planned by government agencies and/or area developments. The Consultant will distinguish between needed on-site versus off-site improvements. The Consultant will make comment on right-of-way constraints and requirements, sight distance issues, ITS elements and multi-modal accommodations as well as travel lanes and traffic controls. Where new turn lane and/or traffic signals are proposed, the consultant will review warrant analysis submitted by the developer for these improvements according to established methods and ensure compliance with the City of Franklin Street Standards and Specifications. In the case of a re-submittal of a TIA that needed revision, the Consultant shall again clear with City Engineering staff the final version before relaying acceptance of the revised TIA to the developer.

### *TASK 3: ESTABLISHMENT OF TIA RECOMMENDATIONS*

The Consultant shall prepare a comprehensive transportation recommendation memorandum for the development's staff report, to include developer obligations for each specific improvement with the associated development stage requirement for completion. The consultant shall provide this memorandum to City Engineering staff for placing the requirements into the staff report, in time for the publication of the staff report for its upcoming FMPC meeting.

When a development with a TIA component is on the agenda for an FMPC and/or BOMA meeting, the Consultant may be required to attend with or on behalf of the Engineering Department staff. The Consultant shall answer any questions of the legislators and applicants and participate in the discussion on the transportation issues as needed.

### *FEE FOR SERVICE*

The Consultant shall negotiate with the developer directly for all fees and tasks associated with this work. The City shall not be invoiced for any of this work.

## **II. GENERAL ON-CALL TRAFFIC ENGINEERING SERVICES**

As determined by City staff, Work Orders shall be mutually agreed upon and the Consultant will help with general traffic engineering services associated with a variety of on-call projects to include, but not be limited to:

- Signal Design
- ITS Design
- Signal Timing
- Warrant Investigations for Signals and Turn Lanes.
- Roadway Design
- Safety Studies
- Transportation Planning and Modeling
- Traffic Data Collection
- Construction Engineering and Inspection

### **Work Order Request Procedure**

- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
- B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
  - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
  - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on the contract anniversary date, based upon the contract



execution date, for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;

- c. An explanation of how the cost was determined; and
  - d. A schedule for completion of the task, including a completion date.
- C. The City Engineer shall issue an approved and signed Work Order, including the Task Proposal as an attachment, in writing prior to any work being completed.
  - D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
  - E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.

**ATTACHMENT B**  
**2022 NEEL-SCHAFER RATE SCHEDULE**  
**CITY OF FRANKLIN ON-CALL TRAFFIC ENGINEERING SERVICES**  
**COF CONTRACT # 2022-0119**

| 2022 Rate Schedule      |                                                         |             |
|-------------------------|---------------------------------------------------------|-------------|
| Employee Classification | Position Title                                          | Hourly Rate |
| P-9                     | Principal                                               | \$250.00    |
| P-8                     | Senior Manager / Vice President                         | \$225.00    |
| P-7                     | Engineer Manager & Professional IV                      | \$210.00    |
| P-6                     | Senior Project Managers & Professional III              | \$185.00    |
| P-5                     | Project Managers & Professional II                      | \$165.00    |
| P-4                     | Engineer & Professional I                               | \$130.00    |
| P-1 thru P-3            | Profession Intern I - III                               | \$100.00    |
| T-5                     | Certified Engineering Technician/Supervisory Technician | \$120.00    |
| T-4                     | Technician IV                                           | \$110.00    |
| T-3                     | Technician III/Inspector III                            | \$95.00     |
| T-2                     | Technician II/Inspector II                              | \$85.00     |
| T-1                     | Technician I/Inspector I                                | \$75.00     |
| T-1                     | Student Intern                                          | \$50.00     |
| A-1 thru A-4            | Administrative/Clerical                                 | \$75.00     |

<sup>1</sup> Per COF Contract #2022-0119, the COF allows Consultant the opportunity to submit amended fee rate schedule no more often than annually on the the anniversary date of contract execution.

### **IRAN DIVESTMENT ACT CERTIFICATION**

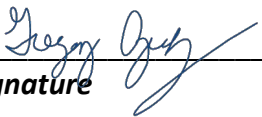
By submission of a bid or proposal to the City of Franklin, the Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that neither they, nor any assignee of the resulting contract, is on the list created pursuant to T.C.A. § 12-12-106. The Bidder further certifies that it shall not utilize any subcontractor identified on the list created pursuant to T.C.A. § 12-12-106. This list is generated to identify entities ineligible to contract with the State of Tennessee or any political subdivision of the State pursuant to the Iran Divestment Act, T.C.A. §§ 12-12-101 – 113, and the current list may be found at the Tennessee Department of General Services, Central Procurement Office, website under the Public Information Library webpage at the following link:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>

This certification shall not be necessary and shall not apply to contracts valued at one thousand dollars (\$1,000.00) or less.

### **CERTIFICATION**

**The Bidder certifies that, to the best of its knowledge and belief, it is not on the Iran Divestment Act list as described above.**

  
\_\_\_\_\_  
**Signature**

01/11/2023  
\_\_\_\_\_  
**Date**

Gregory D. Judy, P.E., PTOE  
\_\_\_\_\_  
**Printed Name**

Vice President / Engineer Manager  
\_\_\_\_\_  
**Title**

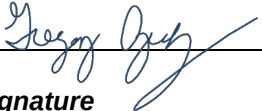
Neel-Schaffer, Inc.  
\_\_\_\_\_  
**Name of Firm/Company**

### **NON-BOYCOTT OF ISRAEL REQUIREMENTS**

*Tennessee Code Annotated* § 12-4-119 (as enacted by Chapter 775 of the Public Acts of 2022) prohibits a public entity from entering into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in, and will not for the duration of the contract engage in, a boycott of Israel. This requirement does not apply to a contract with a total potential value of less than two hundred fifty thousand dollars (\$250,000) or to contractors with less than ten (10) employees.

### **CERTIFICATION**

The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119

  
\_\_\_\_\_  
**Signature**

01/11/2023  
\_\_\_\_\_  
**Date**

Gregory D. Judy, P.E., PTOE  
\_\_\_\_\_  
**Printed Name**

Vice President / Engineer Manager  
\_\_\_\_\_  
**Title**

Neel-Schaffer, Inc.  
\_\_\_\_\_  
**Name of Firm/Company**