



City of Franklin

109 3rd Ave S
Franklin, TN 37064
(615)791-3217

Meeting Agenda Capital Investment Committee

Thursday, July 23, 2015

3:30 PM

Board Room

Call To Order

Approval of Minutes

1. [15-0669](#) Approval of Minutes from June 25, 2015 Committee meeting.
2. [15-0634](#) City of Franklin Contract No. 2015-0189 Proposal for Environmental Assessment Bicentennial Park (Referred from 07/23/15 CIC 4-0; 8/11/15 WS)

Sponsors: Lisa Clayton
Attachments: [COF 2015-0189 PSA BWSC Environmental Assessment.docx](#)
[COF 2015-0189 BWSC Environmental Assessment Proposal.pdf](#)
3. [15-0649](#) Consideration of Amendment No. 1 to the Professional Services Agreement (COF Contract No. 2013-0182) with Neel-Schaffer, Inc. for the Figuers Drive Area Drainage Improvements Project for a not-to-exceed cost INCREASE of \$125,000.00 (07/23/15 CIC 4-0)

Sponsors: Paul Holzen and Engineering
Attachments: [COF 2013-0182 PSA Amendment No. 1 - Law Approved.pdf](#)
4. [15-0650](#) Consideration Of A Facility Encroachment Agreement (COF Contract No. 2015-0180) For A Sanitary Sewer Line Crossing With CSX Transportation, Inc. As A Part Of The Spencer Creek At Franklin Road Sanitary Sewer Improvements Project (07/23/15 CIC 4-0)

Sponsors: Paul Holzen and Engineering
Attachments: [COF 2015-0180 CSX 787815 Agreement.pdf](#)
[COF 2015-0180 Exhibit A CSX 787815.pdf](#)
5. [15-0651](#) Consideration of a Professional Services Agreement (COF 2015-0179) with Gresham Smith and Partners for the Cool Springs Area Traffic Signal Timing Project in the amount of \$119,860.72 (07/23/15 CIC 4-0)

Sponsors: Paul Holzen and Engineering
Attachments: [COF2015-0179 PSA CoolSpringsSignalTiming LawApproved.pdf](#)

6. [15-0655](#) Consideration of Resolution 2015-44, A Resolution Awarding the Construction Contract (COF Contract No. 2014-0040) for the SR 96 West Sidewalk Project to Civil Constructors, LLC in the amount of \$596,116.10 (07/23/15 CIC 4-0)
- Sponsors:** Paul Holzen and Engineering
- Attachments:** [Res 2015-44 Award of COF 2014-0040 to Civil.doc](#)
7. [15-0656](#) Consideration of Resolution 2015-45, A Resolution Awarding the Construction Contract (COF Contract No. 2014-0042) for the Century-Beasley Connector Project to Jenco Construction, Inc. in the amount of \$399,250.97 (07/23/15 CIC 4-0)
- Sponsors:** Paul Holzen and Engineering
- Attachments:** [Res 2015-45 Award COF 2015-0042 Jenco.doc](#)
8. [15-0661](#) Consideration of Amendment No. 1 to the professional services agreement (COF Contract No. 2014-0087) with Civil Infrastructure Associates for Surveying Services for the SR-96 East Sidewalk Project in the Amount of \$11,950.00 (07/23/15 CIC 4-0)
- Sponsors:** Paul Holzen and Engineering
- Attachments:** [COF 2014-0087 - Amendment 1 Exhibit A.pdf](#)
[COF 2014-0087 - Amendment 1 - CIA SR96E Trail PSA.pdf](#)
9. [15-0662](#) Consideration of Agreement (COF Contract No. 2015-0172) with Boyle Investment Company for the Carothers Parkway and Meridian Boulevard/Gillespie Drive Intersection Improvements Project (07/23/15 CIC 4-0; Deferred from 08/25/15, 9/08/2015, AND 9/22/2015 BOMA)
- Sponsors:** Paul Holzen and Engineering
- Attachments:** [DRAFT - COF 2015-0172 Carothers Parkway and Meridian Blvd Intersection Im](#)
[COF 2015-0172 Carothers Parkway and Meridian Blvd Intersection Improver](#)
10. [15-0663](#) Consideration of a Professional Services Agreement (COF Contract No. 2015-0186) with Civil & Environmental Consultants, Inc. for Survey and Design of the Harpeth River Bank Stabilization Project at the Franklin Water Reclamation Facility in an amount not to exceed \$74,400.00 (07/23/15 CIC 4-0)
- Sponsors:** Paul Holzen and Engineering
- Attachments:** [COF 2015-0186 - Harpeth River Bank Stabilization - Scope.pdf](#)
[COF 2015-0186 - Harpeth River Bank Stablization Map - Exhibit A.pdf](#)
[COF 2015-0186 Harpeth River Bank Stabilization PSA.PDF](#)

11. [15-0664](#) Consideration Of A Request To Deny Sanitary Sewer Availability Denial For 2027 Wilson Pike (Tax Map 80, Parcel 45.03) (07/23/15 CIC 4-0)
- Sponsors:** Paul Holzen
- Attachments:** [2027 Wilson Pike Exhibit 1.pdf](#)
[2027 Wilson Pike Exhibit 2.pdf](#)
[2027 Wilson Pike Letter.docx](#)
12. [15-0665](#) Consideration Of A Request To Deny Sanitary Sewer Availability For 4101 Clovercroft Rd (Map 080, Parcel 44.01) (07/23/15 CIC 4-0)
- Sponsors:** Paul Holzen
- Attachments:** [Redemption Church 4101 Clovercroft Rd Exhibit A.pdf](#)
[Redemption Church 4101 Clovercroft Rd Request.pdf](#)
13. [15-0666](#) Discussion Concerning the Cities Policy on Water and Sanitary Sewer Availability (Deferred from 07/23/15 CIC)
- Sponsors:** David Parker and Paul Holzen
- Attachments:** [Policy on Water and Sewer Availability 1992.pdf](#)
14. [15-0657](#) Transportation Projects Status Report
- Sponsors:** Engineering
15. [15-0658](#) Water and Sewer Projects Status Report
- Sponsors:** Engineering
16. [15-0659](#) Stormwater Projects Status Report
- Sponsors:** Engineering

Other Business

Adjournment

ANYONE REQUESTING ACCOMMODATIONS DUE TO DISABILITIES SHOULD CONTACT A.D.A. COORDINATOR, AT 791-3277 PRIOR TO THE MEETING, IF POSSIBLE.

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2015-0189**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **Barge Waggoner Sumner & Cannon, Inc. (BWSC)** 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:

Bicentennial Park Environmental Assessment

1. SCOPE OF SERVICES. Consultant shall provide engineering and related technical services for the Project in accordance with the Scope of Services. The Scope of Services as found in **Attachment A** shall be considered as an integral part hereof.
2. Consultant shall be paid in an amount not to exceed One Hundred Twenty-Six Thousand Fifty and No/100 Dollars (\$126,050.00) for the Tasks as established in Attachment A.
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.

**The Board of Mayor and Aldermen Approved this Agreement on the
_____ Day of _____ 2015.**

BY: _____
Consultant's Signature
TITLE: _____
Date: _____

BY: _____
Dr. Ken Moore
Mayor
Date: _____

Approved as to Form:

By: _____
Shauna R. Billingsley, City Attorney

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 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.
- 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. However, nothing in this Article shall prevent Consultant from

engaging independent consultants, associates, and subcontractors to assist in the performance of the Services at Consultant's cost.

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 contract 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 **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.

6.3 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.

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 the Contract. No arbitration or mediation shall be binding.
- 12.2 BREACH. Upon deliberate breach of the Contract by either party, the non-breaching party shall be entitled to terminate the Contract 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 Contract, agreement 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.

