



Meeting Agenda

Capital Investment Committee

Thursday, February 22, 2024

3:30 PM

Board Room

CALL TO ORDER

SETTING OF AGENDA

1. Consideration Of Changes In Agenda And Setting The Agenda
 - A. Proposed Changes
 - B. Approval Of Agenda As Submitted Or Changed

CITIZEN COMMENTS (Open for citizens to be heard on any issue or concern, including those related to items on the agenda. Please submit a Speaker Card at the beginning of the meeting if you would like to address the Board/Commission. If you would like to speak on an agenda item, the Chair will hold your comment until the public comment period associated with the item. As provided by law, Boards/Commissions shall make no decisions or consideration of action of citizen comments for items not on the agenda, except to refer the matter to the City Administrator/Staff for administrative consideration, or to a schedule the matter for consideration at a later date. Those addressing the Board/Commission are requested to come to the microphone and identify themselves by name and address for the official record. The Chair may restrict the period for public comment, including the length of the public comment period, the number of individuals who can speak and the length of time each individual may speak. When time allows, the standard individual public comment time is two minutes.)

Comments on agenda items may be made in person at City Hall or by emailing recorder@franklintn.gov before noon on the day of the meeting. Comments will be submitted for the record.

APPROVAL OF MINUTES

2. Consideration Of Approval Of Minutes
December 14, 2023 Capital Investment Committee Meeting

NEW BUSINESS

3. Election Of Chair And Vice Chair
4. Consideration Of COF Contract No. 2023-0387, With C&T Engineering For Solids Process Optimization

Sponsors: Michelle Hatcher

5. Consideration Of COF Contract No. 2024-0016, With Hazen And Sawyer For Professional Services Agreement For Construction Administration For The Downtown Area Infrastructure Improvements Project In The Amount Of \$586,700

Sponsors: Michelle Hatcher, Brian Goodwin, Patricia McNeese

6. Consideration Of DRAFT Amendment 1 To COF Contract No. 2021-0283, A Professional Services Agreement With Lose Design For The Liberty Park Expansion Project At A Lump Sum Cost Increase Of \$28,500

Sponsors: Paul Holzen, Jonathan Marston, Shahad Abdulrahman

7. Capital Projects Dashboard And Status Updates For February 2024

Sponsors: Paul Holzen, Jonathan Marston

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.



Meeting Minutes

Capital Investment Committee

Thursday, December 14, 2023

3:30 PM

Board Room

CALL TO ORDER

Chair Matt Brown called the meeting to order at 03:30 PM

Board Members Present: Brandy Blanton, Matt Brown, Greg Caesar

Board Members Absent: Beverly Burger

Staff Present: Eric Stuckey, Paul Holzen, Jonathan Marston, Angie Skarp

CITIZEN COMMENTS (Open for citizens to be heard on any issue or concern, including those related to items on the agenda. Please submit a Speaker Card at the beginning of the meeting if you would like to address the Board/Commission. If you would like to speak on an agenda item, the Chair will hold your comment until the public comment period associated with the item. As provided by law, Boards/Commissions shall make no decisions or consideration of action of citizen comments for items not on the agenda, except to refer the matter to the City Administrator/Staff for administrative consideration, or to a schedule the matter for consideration at a later date. Those addressing the Board/Commission are requested to come to the microphone and identify themselves by name and address for the official record. The Chair may restrict the period for public comment, including the length of the public comment period, the number of individuals who can speak and the length of time each individual may speak. When time allows, the standard individual public comment time is two minutes.)

Comments on agenda items may be made in person at City Hall or by emailing recorder@franklintn.gov before noon on the day of the meeting. Comments will be submitted for the record.

APPROVAL OF MINUTES

1. **Consideration Of Approval Of Minutes**
September 28, 2023 Capital Investment Committee Meeting
October 26, 2023 Capital Investment Committee Meeting

Sponsors: Angie Skarp

A motion was made by Alderman Brandy Blanton, seconded by Alderman Matt Brown to Approve the September 28, 2023 Capital Investment Committee Meeting Minutes. The motion passed 2-0-1. Alderman Greg Caesar abstained.

NEW BUSINESS

2. **Election Of Chair And Vice-Chair, Effective 2024**

Sponsors:

A motion was made by Alderman Greg Caesar, seconded by Alderman Matt Brown to Nominate Alderman Blanton as Chair. The motion passed 3-0.

A motion was made by Chair Brandy Blanton, seconded by Alderman Matt Brown to Nominate Alderman Caesar as Vice Chair. The motion passed 3-0.

3. **Consideration Of Final Change Order To COF Contract No. 2022-0182, With Haren Construction For WTP Valve Access Improvements Project For An Increase Amount Not To Exceed \$34,172**

Sponsors: Michelle Hatcher, Brian Goodwin, Patricia McNeese

A motion was made by Alderman Matt Brown, seconded by Vice Chair Greg Caesar to defer this item to the January 25, 2024 Capital Investment Committee Meeting. The motion passed 3-0.

4. **Consideration Of Ordinance 2023-38, An Ordinance To Establish A No-Parking-Anytime Zone Along A Portion Of Fristoe Lane And A Northerly Portion Of Strahl Street**

Sponsors: Paul Holzen, Adam Moser

A motion was made by Alderman Matt Brown, seconded by Alderman Greg Caesar to Recommend Approval of the Ordinance to the Board of Mayor and Aldermen. The motion passed 3-0.

5. **Consideration Of DRAFT Resolution 2023-80, A Resolution To Award The Construction Contract (COF Contract No. 2023-0335) For The Jordan Road Improvements Project (COF Project No. 2020-012) To Jones Bros. Contractors, LLC In The Amount Of \$2,399,843**

Sponsors: Paul Holzen, Jonathan Marston, William Banks

A motion was made by Alderman Matt Brown, seconded by Vice Chair Greg Caesar to Recommend Approval of the Resolution to the Board of Mayor and Aldermen. The motion passed 3-0.

6. **Consideration Of Change Order 1 And Change Order 2 To COF Contract No. 2022-0116, With Stansell Electric Co, Inc For SR-96 (Murfreesboro Road) Traffic Signal Improvements (TDOT PIN 127913.00) For A Cost Increase Of \$60,880**

Sponsors: Paul Holzen, Adam Moser

A motion was made by Alderman Matt Brown, seconded by Vice Chair Greg Caesar to Recommend Approval of the Contract Change Order to the Board of Mayor and Aldermen. The motion passed 3-0.

7. **Capital Projects Dashboard And Status Updates For December 2023**

Sponsors: Paul Holzen, Jonathan Marston

The item was acknowledged.

OTHER BUSINESS

ADJOURN

A motion was made by Alderman Matt Brown, seconded by Vice Chair Greg Caesar to Adjourn the Meeting. The motion passed 3-0.

Meeting Adjourned @ 3:56 PM

Brandy Blanton, Chair

Minutes Prepared by Sarah Schilling, Assistant Deputy City Recorder, City Administrator's Office - 2/9/2024,
11:49AM



File #: 21-05843

DATE: December 15, 2023
TO: Capital Investment Committee
FROM: Michelle Hatcher, Director of Water Management

SUBJECT:

Consideration Of COF Contract No. 2023-0387, With C&T Engineering For Solids Process Optimization

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning a contract with C&T Engineering for work in the new solids building for the Water Reclamation Facility.

BACKGROUND/STAFF COMMENTS:

As part of the new solids building construction that is finished, the need for operator round sheets (inspections performed at hourly or more frequency) is vital to maintain operations and efficiency. With the solids process being historically unfamiliar to City staff, we have asked C&T Engineering, who performed the construction inspection for the construction of that building, to help us create "round" sheets operators can utilize during their shifts. These will be developed electronically through an inspection application where historical trends can be gathered and analyzed.

C&T Engineering will also help to develop a cold weather Standard Operating Procedure for the critical pieces of equipment in the solids buildings most vulnerable to cold weather. During this last winter weather week, these critical pieces of equipment required extra attention to maintain. Developing an SOP will help to formalize what is needed during various temperature drops, as well as allow for a consistent transfer of knowledge between new operators and tenured operators, ensuring operations remain efficient.

The remaining tasks for this scope include developing additional Standard Operating Procedures for these critical pieces of equipment, either through operator inspections or maintenance team inspections, to ensure optimal equipment lifespan. Developing these SOPs will help to formalize what is needed at various times throughout the year, as well as allow for a consistent transfer of knowledge among operators.

The scope of this project will not be full time as constant oversight is not needed for the solids team at the facility, but rather will be driven by submittal deliverables and interactions with staff for

implementation of those deliverables. The Department was also funded for a new position in the FY 24 budget for Maintenance Manager that has not been filled, so this contract will supplement existing staff with maintenance needs for this new facility.

FINANCIAL IMPACT:

The contract is for a eighty-two thousand six hundred and fifty dollars and zero cents (\$82,650) and will not be exceeded without written authorization from the Department for additional work. This work is funded from the Water Reclamation Facility operations fund 421-82560-52213.

RECOMMENDATION:

Staff recommends that COF Contract No. 2023-0387 be recommended to the Board of Mayor and Aldermen for approval.



C&T ENGINEERING

1113 Murfreesboro Rd. Ste. 106-102
Franklin, TN 37064

615.567.3306
ctengineering.net

ATTACHMENT A

City of Franklin, Tennessee Proposal for Solids Process Optimization

The purpose of this proposal is to provide a scope and fee for C&T Engineering to assist the Water Management Department and Water Reclamation Facility staff with the WRF Maintenance Optimization activities detailed below under scope of work.

The Scope of Work detailed herein and broken down into five tasks listed in Table 1.

Scope of Work

The Scope of Work will include the following milestones broken into four tasks:

- 1) Develop the WRF Operator Solids Round Sheets and convert to the mobile App platform,
- 2) Develop and implement a cold weather performance management Standard Operating Procedures (SOP) for the Combined Heat & Power (CHP) engine and appurtenances,
- 3) Develop and implement a cold weather performance management Standard Operating Procedures (SOP) for Thermal Hydrolysis Process (THP) and appurtenances,
- 4) Develop and implement a cold weather performance management Standard Operating Procedures (SOP) for the Heat Recovery Steam Generator (HRSG)
- 5) Develop a comprehensive Thermal Hydrolysis Process (THP) maintenance SOP.
- 6) Develop a boiler pressure vessel and HRSG maintenance SOP.
- 7) Maintenance Advisor to WRF Maintenance Staff.

Task 1.0, Develop WRF Solids Operator Round Sheets.

C&T Engineering will partner with the City of Franklin Water Management Department to update the current operator round sheets at the treatment facility and add new information related to the new processes, equipment, and structures. The new rounds sheets will include checks on the new headworks structure and odor control, updated biological nutrient removal basins checks, new ultraviolet light structure and process, and an entirely new solids processing sheet dedicated to the solids operators. The updated operator round sheets will be digitized (by COF) to be used in a mobile App platform that will be implemented for the Operator's use, however, C&T will provide quality control over the development to ensure the incorporation and operator-friendliness of the sheet. C&T will then work with City Staff to transition to the mobile App platform, discontinuing outdated data collection methods and improving efficiency and productivity.

Task 2.0, Develop a cold weather performance management SOP for the CHP, THP and HRSG.

C&T Engineering will create a cold weather performance management SOP for the Combined Heat and Power system, Heat Recovery Steam Generator, the Thermal Hydrolysis Process skid including pipes, actuated valves, compressed air systems, biogas system, and economizer. C&T will assist Water Management Staff with executing the cold weather performance management SOP so that they are prepared if it is needed. The SOP will also be digitized to be used in the mobile App platform.



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Task 3.0, Develop a comprehensive THP maintenance SOP.

C&T Engineering will develop a comprehensive maintenance SOP for the Thermal Hydrolysis system to keep it running efficiently to help lower annual maintenance costs. The SOP will be comprehensive to include maintenance of the Huber screening presses, THP Pulper extruder removal, cleaning, and reinstallation, THP pressure Reactor's 1-4 pressure vessel interior visual inspection and cleaning, Flash Tank blowdown lance removal, inspection and cleaning, Process Gas Unit (PGU) foul odor control cleaning and inspection, and both Atlas Air Compressors used to actuate the Nihard valves. C&T will also collaborate with the WRF Supervisors to finalize a THP spare parts list.

Task 4.0, Develop a Boiler Pressure Vessel and HRSG maintenance SOP

C&T Engineering will develop a comprehensive boiler pressure vessel and THP required maintenance SOP for the annual boiler and THP shutdown. The SOP will include a timeline with critical path milestones to be achieved by project staff and outside vendors in order to be successful. The timeline will be based upon a 5-day temporary shutdown followed by restarting the system. The SOP will conclude with inspection from the National Board of Boiler and Pressure Vessel Inspectors and Tennessee Chief Boiler Inspector for the annual pressure vessel permit renewal.

Task 5.0, Maintenance Advisor and Consultation to WRF Staff

C&T Engineering on an as needed basis will provide advisory services to onsite WRF maintenance staff. The advisory services will include technical assistance with understanding and implementing O&M Manuals, SOPs and other PMs, assistance solving complex equipment maintenance challenges, assistance planning and implementing solutions that do not hinder other processes, assistance diagnosing, testing, and troubleshooting equipment issues.

Budget

C&T Engineering proposes to perform the above work on a billing rate basis for a not to exceed price of \$82,650.00. A breakdown of costs is provided on Table 1 herein.

Table-1
Summary of Budget by Task
Solids Process Optimization

Task No.		1.0	2.0	3.0	4.0	5.0	
		Develop WRF Operator Solids Round Sheets	Develop Cold Weather Performance Management SOPs	Develop a Comprehensive THP Maintenance SOP	Develop a Boiler Pressure Vessel and HRSG Maintenance SOP	Maintenance Advisor to Water Reclamation Facility Staff	Totals
LABOR	Rate						
Officer	\$225						0
Project Manager	\$190	2	5	6	2	8	23
Sr. Technical Advisor	\$205						0
Technical Specialist	\$115	105	115	120	100	220	660
Engineer, Senior	\$165						0
Designer/Drafter	\$105						0
Administrative Staff	\$85	4	6	6	6	6	28
TOTAL HOURS		111	126	132	108	234	711
TOTAL DOLLARS		\$12,795	\$14,685	\$15,450	\$12,390	\$27,330	\$82,650

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2024-0048**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **C&T ENGINEERING** 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:

WRF Maintenance Optimization: C&T Engineering to assist the Water Management Department and Water Reclamation Facility staff with the WRF Maintenance Optimization with activities in detailed scope of work.

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 eighty two thousand, six hundred and fifty dollars \$82,650.00.

The Board of Mayor and Aldermen Approved this Agreement on the _____ Day of _____ 201__.

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.

- 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 [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:

Shauna R. Billingsley, City Attorney



File #: 21-06004

DATE: January 30, 2024
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 COF Contract No. 2024-0016, With Hazen And Sawyer For Professional Services Agreement For Construction Administration For The Downtown Area Infrastructure Improvements Project In The Amount Of \$586,700

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning a contract with Hazen and Sawyer for construction administration for the Berry Circle/Lewisburg Ave water and sewer improvements project.

BACKGROUND/STAFF COMMENTS:

The Berry Circle/Lewisburg Ave water and sewer improvements project is currently out to bid. This project will provide increased availability of domestic water and an upgrade to the deteriorated sanitary sewer system. This contract is for construction administration for the improvements project to include RFI and submittal review, day to day inspection, progress meeting agendas and minutes, and pay application review and approval. With this highly visible and ARPA funded project, there are many intricate details, such as traffic on a TDOT roadway, ARPA documentation, roadway closures, and construction phasing, that WMD staff feels would be better served with an outside consultant handling the majority of the project and day-to-day operations.

FINANCIAL IMPACT:

The cost of the item will not exceed \$586,700 without written authorization and is included in the current Water and Sewer Operating fund. It is also an ARPA direct-allocation funded project.

RECOMMENDATION:

Staff recommends that the contract with Hazen and Sawyer for the construction administration of the Downtown Area Infrastructure Improvements be recommended to the Board of Mayor and Aldermen for approval.

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2024-0016**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **HAZEN AND SAWYER** 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 Administration for Berry Circle/Lewisburg Ave
Water and Sewer Improvements**

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 **(Five Hundred Eighty-Six Thousand Seven Hundred and No/100 Dollars)** (\$586,700.00).

**The Board of Mayor and Aldermen Approved this Agreement on the
_____ Day of _____ 202__.**

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.

- 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.

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- 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.
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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 [click on 'per diem rates' under the 'etools' category].

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- 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:

J. Blake Harper, Staff Attorney



Hazen and Sawyer
545 Mainstream Drive, Suite 320
Nashville, TN 37228 • 615.783.1515

September 19, 2023

Brian Goodwin, P.E.
Assistant Director
City of Franklin – Water Management Department
124 Lumber Drive
Franklin, TN, 37064

Re: Proposal for Construction Management Services – Berry Circle Water and Sewer Improvements

Dear Brian:

Hazen and Sawyer (Hazen) is pleased to submit this proposal to provide construction management (CM) services for the above-referenced project. Although the project is divided into phases, only the *BASE* bid was assumed for this proposal. If additional bid alternates are chosen, this proposal would need to be amended accordingly.

Project Approach

Hazen staff will provide all construction management and engineering services during construction. For Resident Project Representative (RPR) services, Hazen proposes to sub-contract with C&T Engineering. C&T has completed several similar projects for Franklin, including Hazen projects. Tom Lamb will provide on-site RPR services assuring the project is being constructed per the contract documents and construction plans.

Scope of Services

Construction Administration

Hazen will provide the following professional engineering services based on design documents provided to the low bidding Contractor.

Conformed Documents – Hazen will prepare conformed drawings and specifications based on the addendum documents issued during the bidding process. Hazen will provide the documents to Franklin and the Contractor in electronic format. Printed copies will be provided to Franklin upon request.

Pre-Construction Conference – Hazen will set up the meeting, prepare the agendas for, and conduct the pre-construction conference to include Franklin, Contractor, and Hazen. Minutes of the meeting will be prepared and distributed to all attendees by Hazen.

Project Management – Hazen will be responsible for overall project management of the construction observation and office construction administration for the 18-month duration of the project. Franklin's decisions will be communicated by Hazen to the Contractor. The Contractor will be responsible for managing and communicating with all other subcontractors and suppliers working on the project. Hazen will direct the construction observation activities and receive and review all Daily Construction

Observation Progress Reports. Hazen will maintain all documentation of project activities on behalf of Franklin.

Project Progress and Invoicing – Hazen will provide full oversight and tracking of the engineering services budget and for preparing the monthly project invoice and progress summary.

Preliminary Schedule Review – Hazen will review and generate comments on the Contractor's proposed preliminary project schedule, schedule of values and shop drawing submission schedules. Hazen will assist Franklin with discussions with the Contractor related to requirements of the Contract, and sequencing of construction.

Progress Review Meetings – Hazen will schedule, prepare for, attend, and conduct monthly progress meetings at the WMD office to include Franklin personnel and the Contractor. These meetings will be normally held on a once per month basis. During critical times of construction, meetings may be held every two weeks. Minutes of the meetings will be prepared and distributed to all attendees and key project team members. Hazen will verify that the Contractor is responsive to Franklin and/or Hazen concerns expressed during the project, including maintaining the project schedule.

The Contractor will conduct progress meetings with all other Contractors/subcontractors working on the project as required to completely coordinate all construction activities. Hazen will participate in these meetings as requested by the Contractor to provide clarification or to resolve unforeseen conditions or problems.

Shop Drawings and Other Submittal Reviews – Hazen will track, manage, log-in, and update documentation associated with submittals and submittal logs. ProCore® (project controls software) will be utilized to provide project team members with access to logs, reports, agendas, meeting minutes, etc. Hazen will consolidate shop drawing review comments, mark the appropriate number of additional shop drawing copies, and prepare final transmittals for distribution to File, Franklin, Contractor, and Hazen. All documentation received and issued will be in an electronic format via ProCore®. Hazen has assumed 100 submittals will be generated by the Contractor for review and includes up to one resubmittal for each submittal.

Requests for Information (RFIs) and Field Orders – Hazen will receive, review, and respond to RFIs in a timely manner. All RFI's will be reviewed by the Contractor before submitting them to Hazen and will originate with the Contractor. Hazen will provide field orders on an as needed basis. Hazen will provide written responses to RFIs incorporating clarifications of the design intent and Franklin decisions where required. Hazen has assumed 50 RFIs will be generated by the Contractor for review.

Request for Proposals – Hazen will prepare Requests for Proposals (RFPs) for items of work outside of the defined scope of work in the plans and specifications. Such RFPs may be developed for additions to or deletions from the project based on unforeseen conditions and/or Franklin requests. All RFPs will be coordinated with the Contractor. Hazen will respond to any questions regarding the RFP to the Contractor. Hazen will evaluate the RFP response including costs or any proposed modifications. Hazen has assumed 2 RFPs will be generated.

Change Orders – Hazen will review claims and/or proposed modifications and advise Franklin on the approach for resolution of the related issues. Hazen will review justification for all claims for

modifications to the project cost and/or schedule and develop recommendations to Franklin for the fair and equitable resolution of such claims. All claims will originate from the Contractor.

The Contractor will prepare all the change orders with individual Contractors and Hazen will collaborate with Franklin to negotiate all claims. Hazen will prepare the overall change orders to the Contractor contract required for the project. Hazen and the Contractor will mutually agree on a format that will be used for all project change orders. Hazen has assumed three change orders will be generated by the Contractor for review.

Punch Lists – Hazen will assist the Resident Project Representative in reviewing the completed work at the intermediate milestones and project substantial and final inspection milestones. The Contractor will prepare a separate punch list that will be resolved before Hazen prepares a punch list. Hazen will develop and manage a final punch list of items for each bid package scope and will assist in resolving punch list items with the Contractor. Hazen will perform follow-up inspections to verify the satisfactory resolution of all punch list items.

Prepare Record Drawings – Using information provided by the Contractor, confirmed by on-site observations, Hazen will provide Record Drawings of the project. Hazen will confirm the validity of the record drawing information provided by the Contractor by using digital photographs and other techniques to provide records of construction details. Record drawings will be furnished in PDF format. Supporting documentation that validates the record drawings will also be provided in electronic format. Hazen will verify and certify that the project has been constructed in accordance with the contract documents.

Certificates of Substantial and Final Completion – Hazen will issue certificates of substantial completion and final completion to the Contractor once Work has been completed to meet the requirements of each.

Resident Project Representative

C&T Engineering will provide a Resident Project Representative (RPR) to observe on-site progress and quality of the work. It is anticipated that the RPR will provide full-time representation at the site of the construction unless there is no construction activity. This assumes 12 months of full-time oversight for a single full-time equivalent worker. In addition to standard working hours, an extra day per week has been assumed to cover potential night work and/or weekends (2,304 hours). The RPR will report directly to Hazen but will communicate directly with the Contractor.

Inspection Services. Hazen will endeavor to provide protection for Franklin against defects and deficiencies in the work through observation of the Contractor's work in progress and field check of materials and equipment by the RPR. However, Hazen will not, during such visits or as a result of such observations of the Contractor's work in progress, supervise, direct, or have control over Contractor's work nor will Hazen have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by the Contractor, for safety precautions and programs incident to each Contractor's work in progress, for any failure of the Contractor to comply with Laws and Regulations applicable to the Contractor's performing and furnishing the work, or responsibility of construction for the Contractor's failure to furnish and perform the work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are as follows:

- **General:** RPR, as Hazen's agent at the Site, will act as directed by and under the supervision of Hazen, and will confer with Hazen regarding RPR's actions. RPR's dealings in matters pertaining to each Contractor's work in progress will in general be with Hazen and Contractor, keeping Franklin advised, as necessary. RPR's dealings with subcontractors will only be through or with the full knowledge and approval of the Contractor. RPR will communicate with Franklin with the knowledge of and under the direction of Hazen.
- **Schedules:** Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by each Contractor and consult with Hazen and Contractor concerning acceptability.
- **Conferences and Meetings:** Attend meetings with each Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings. The RPR will prepare and circulate copies of minutes of meeting between the Contractor and Franklin. The Contractor will prepare all other minutes of meetings involving each Contractor.
- **RPR Liaison Responsibilities:** Serve as Hazen's liaison with Contractor, working principally through Contractor's project manager and assist in understanding the intent of the Contract Documents.
- **Interpretation of Contract Documents:** Report to Hazen when clarifications and interpretations of the Contract Documents are needed and transmit to the Contractor clarifications and interpretations as issued by Hazen.
- **Shop Drawings and Samples:** Advise Hazen and Contractor of the commencement of any portion of the work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Hazen.
- **Modifications:** Consider and evaluate the Contractors suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to Hazen. Transmit to Contractor in writing decisions as issued by Hazen.
- **Review of work and Rejection of Defective work:** Conduct on-site observations of each Contractor's work in progress to assist Hazen in determining if the work is in general proceeding in accordance with the Contract Documents. Report to Hazen whenever RPR believes that any part of each Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents and communicate these deficiencies in writing to the Contractor.
- **Records:** Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, Hazen's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to each Contractor, and other Project related documents.

Prepare a daily report or keep a diary or logbook, recording each Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, work Change

Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Hazen. Record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.

Maintain detailed records for use in preparing Project documentation. The resident project representative will maintain detailed records of locations of underground construction and deviations from the contract construction drawings for preparation of as-built record drawings by Hazen. These records will be discussed with each Contractor at least monthly to ensure that all locations and deviations are recorded. Upon completion of the work, furnish original set of all RPR Project documentation to Franklin.

- **Payment Requests:** Review Applications for Payment with the Contractor for compliance with the established procedure for their submission, noting particularly the relationship of the payment requested to the schedule of values, work completed, and materials and equipment delivered at the Site but not incorporated in the work. Verify the appropriateness of the pay requests, combined sales tax reports, the state of completion of the work and the proper storage and maintenance of stored materials.
- **Completion:** Before Hazen issues a Certificate of Substantial Completion to the Contractor, submit a list of observed items requiring completion or correction. Observe whether the Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the work. Participate in a final inspection in the company of Hazen, Franklin, and Contractor and prepare a final list of items to be completed or corrected. Observe whether all items on final list have been completed or corrected and make recommendations to Hazen concerning acceptance.

Project Schedule

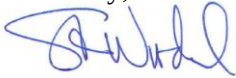
Hazen will begin CM support following bid opening and once written authorization to proceed from Franklin is received. **Hazen assumes a duration of 18 months** for the *BASE* bid scope of work. Hazen anticipates **RPR services will be needed for 12 months** of the total duration of construction.

Estimated Fee

Hazen estimates a total cost of **\$586,700** to complete the scope of services as described in our proposal.

Please feel free to contact me if you have any questions. As always, we appreciate the opportunity to work with Franklin's Water Management Department.

Sincerely,



Scott Woodard, PE
Vice President

	S. Woodard Nashville	R. Dean Nashville	M. Orr Nashville	A. Turner Nashville	M. Seebold Louisville	T. Lamb C&T	Total Hours	Fee Labor
	PP VP	PM Sr.Mdlr	QC SA	Des. Eng. A	Designer Prn. Des.	Field Insp. CM		
	\$282	\$209	\$255	\$231	\$165	\$115.5		
TASK 1 – Construction Administration								
Conformed Documents			2	8	24		34	6,318
Pre-Construction Conference	2	8	8	8			26	6,124
Project Management	8	72	144	144			368	87,288
Project Progress and Invoicing		72					72	15,048
Preliminary Schedule Review		8	8	8			24	5,560
Progress Review Meetings			36	72			108	25,812
Shop Drawings and Other Submittal Reviews			50	300			350	82,050
Requests for Information (RFIs) and Field Orders			50	100			150	35,850
Request for Proposals	2	8	8	8			26	6,124
Change Orders	2	12	12	24			50	11,676
Punch Lists		8	8	8			24	5,560
Prepare Record Drawings		2		24	40		66	12,562
Certificates of Substantial and Final Completion	2	8	24	40			74	17,596
TASK 1 TOTALS	16	198	350	744	64		1,372	317,568
TASK 2 - Resident Project Representative								
RPR Total Responsibilities for 12 months						2,304	2,304	266,112
TASK 2 TOTALS						2,304		266,112
Grand Totals	16	198	350	744	64	2,304	1,372	583,680



Labor Subtotal	583,680
Misc. Expenses	3,000
Total Estimated Cost	586,700

Total cost for C&T is estimated to be \$266,112. This assumes Tom being on-site for 12 months x 8 hours a day x 4 weeks per month x 6 days a week. Fee includes a 10% markup by Hazen, which is reflected in the hourly rate of C&T.

Hazen will visit the site regularly. The frequency of visits will depend on the progress of construction and any issues that arise. However, it is envisioned that the RPR will be the primary presence in the field. Hazen does not plan on spending large amounts of time at the site.



File #: 21-06054

DATE: February 12, 2024
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 1 To COF Contract No. 2021-0283, A Professional Services Agreement With Lose Design For The Liberty Park Expansion Project At A Lump Sum Cost Increase Of \$28,500

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Amendment 1 to the Professional Services Agreement (PSA) with Lose Design for the "Liberty Park Expansion" project.

BACKGROUND/STAFF COMMENTS:

On September 9, 2021, the BOMA approved a PSA (COF Contract No. 2021-0283) with Lose Design, in the amount of \$359,000, to provide engineering design services for the Liberty Park Expansion Project. The design is nearing its completion, and the project team has realized the need for some minor modifications to the original design and to incorporate an additional irrigation plan into the larger plan set. Amendment 1 will allow the Lose team to provide these additional services, which are outside the scope of the original agreement.

FINANCIAL IMPACT:

The original contract was for a lump sum of \$359,5000. Amendment 1 is for a lump sum increase of \$28,500. Expenses for the original contract have been billed to the General Ledger (GL) code of 310-89310-44700, which corresponds to the fund for acquisition and improvements to City Parks. It is anticipated that the additional expenses of Amendment 1 will be billed to the same funding source.

RECOMMENDATION:

Staff recommends that Amendment 1 to COF Contract No. 2021-0283 with Lose Design be recommended to the Board of Mayor and Aldermen for approval.

**AMENDMENT 1 TO
PROFESSIONAL SERVICES AGREEMENT
FOR Liberty Park Expansion (2023)
COF Contract No. 2021-0283**

THIS AMENDMENT is made and entered into on this the ____ day of _____, 20____, by and between the **City of Franklin, Tennessee** ("City") and **Lose Design** ("Consultant").

WITNESSETH:

WHEREAS, on 9th of September 2021, the City and the Consultant entered into a Professional Services Agreement ("Agreement") entitled **Liberty Park Expansion (2023) Project**; and

WHEREAS, said Agreement stipulated that the Consultant would be paid a lump sum fee of Three Hundred Fifty-Nine Thousand and No/100 DOLLARS (\$359,000.00) to provide engineering design services as detailed in the Scope of Services; and

WHEREAS, the Consultant has provided a Proposal ("Attachment A"), dated February 3, 2024, to provide the additional services requested by the city at a Lump Sum Cost Increase of **Twenty-Eight thousand Five Hundred and 00/100 DOLLARS (\$28,500)**; 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 February 3rd, 2024, 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 **Twenty-eight Five Hundred and 00/100 DOLLARS (\$28,500)**;

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 September 9th, 2021, 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)

Name: Dr. Ken Moore

Title: Mayor

Date: _____

(Signature)

Name: _____

Title: _____

Date: _____

Attest:

(Signature)

Eric S. Stuckey
City Administrator

Date: _____

Approved as to Form:

, Staff Attorney

Contract Amendment No. 1

February 03, 2024

Mr. Paul Holzen
City of Franklin
109 3rd Avenue South
Franklin, Tennessee 37064

Contract Amendment No. 1

Liberty Park

Original Contract Dated November 11th, 2021

COF Contract No. 2021-0283

Lose Design Job Number 19231-1

This letter shall serve as Contract Amendment No. 1 for Liberty Park. Contract Amendment No. 1 will cover the following services outlined below.

Scope Narrative: Lose Design (Lose) understands that the City of Franklin (Client) requires Lose to provide services outside of the original agreement for amenity areas and elements within the park and to accommodate additional stormwater runoff. Lose further understands that the scope and extent of grading and hydrology increased after the 50% submittal. The areas of improvement outside the current contract are indicated below. Lose also understands that the City desires Lose to evaluate a completed irrigation design and include in the final bid set for Liberty Park.

Fees: Amendment No. 1

Fees will be \$28,500.00 for additional services

If you have any questions, please feel free to give me a call to discuss. We have enjoyed working with your team and look forward to assisting with this portion of the project as well.

Sincerely,



Josh Gulick, ASLA
Executive Vice President

Task 1 – Increased Stormwater Areas:

This task will consist of the following items for areas indicated in tasks 1-1c:

- Expanded grading and drainage.
- EPSC plans for additional disturbed areas.
- Expanded utility pipe design and routing.
- Evaluate existing hydrology and prepare evaluation of stormwater detention requirements.
- Water quality design to meet City requirements.
- Accommodate increased stormwater footprint for additional areas.
- Re-design of stormwater ponds designed for in-scope items to the 50% level.
- Addition of two stormwater ponds based on updated calculations.
- Updated hydrology report per additional improvements.
- Impervious area addition for future trails.

Task 1a – Pickleball and Tennis Area:

This task will consist of the following:

- Verifying geometry of tennis and pickleball to a CD level.
- Accommodation of additional future impervious area for inclusion in Task 1.

Task 1b – Re-routed drainage Area:

This task consists of the following based on design changes after kick-off meeting and subsequent 50% CD submittal:

- Adjacent impacts of grading to remove wall at cricket and extend L.O.D for tie-in.
- Accommodation of additional grading, pipes and calcs covered by Task 1.

Task 1c – Second Restroom Facility:

This task consists of the following:

- Adjacent impacts of grading to extend L.O.D for tie-in and wall.
- Accommodation of additional grading, pipes and calcs covered by Task 1.

Task 2 – Existing Ballfield Irrigation:

This task consists of the following:

- Review and site evaluation of existing irrigation facilities
- Review and coordination of provided irrigation plan by others for completeness and constructability.
- Incorporation of irrigation plan into the Liberty Park construction document set.
- Recommend additional information be incorporated into the plans as necessary to the City for coordination with designer of record.

Note: The irrigation plan has been created by others through the City and will be incorporated into the set at the City's request. Lose shall take no responsibility for completeness and accuracy of the plan.

Fees

The services described herein will be provided on a Lump Sum (LS) fee as follows:

<u>Total</u>	<u>Fee Amount ⁽¹⁾</u>
Task 1	\$25,000.00
Task 2	\$3,500.00
Total.....	\$28,500.00

Notes:

(1) Expense amounts are **not** included in these fees and are inclusive of reasonable out-of-pocket expenses incurred on behalf of the client and shall include travel and subsistence, plotting and reproduction, telephone/communications, deliveries, agency fees, and mileage. Expenses shall be billed in accordance with Attachment A.

Remit Payment To:

Lose Design
Attn: Accounts Receivable
2809 Foster Avenue
Nashville, TN 37210

Questions May Be Directed to:

Tammy Boyte
Controller
tboyte@lose.design
615-767-5811

Terms and Conditions outlined in the original contract dated July 23rd, 2021 will govern the work included in Amendment 1.

Agreed to:

Agreed to:

Client Name

Lose Design
Lose & Associates, Inc., dba Lose Design

Signer's Name (Typed or Printed)

Signer's Name (Typed or Printed)

BY: _____
Authorized Signature

BY: _____
Authorized Signature

Date: _____ Date: _____

Title: _____ Title: _____

To Whom Should Invoices Be Directed:

NAME: _____

EMAIL ADDRESS: _____



File #: 21-06088

DATE: February 15, 2024
TO: Capital Investment Committee
FROM: Paul Holzen, Director of Engineering
Jonathan Marston, Asst. Director of Engineering

SUBJECT:

Capital Projects Dashboard And Status Updates For February 2024

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning the status of some of the City's transportation, stormwater, and parks capital projects.

BACKGROUND/STAFF COMMENTS:

To access the live dashboard for the City of Franklin Capital Investment Projects, please go to the following City webpage:

[COF Dashboard Link](#)

Manually locate the dashboard following the instructions below:

Go to the City of Franklin's main website at: <https://www.franklinton.gov/>,
Hover your cursor over "**Our City**" or "**Business**",
Click on "[City Projects](#)",
Click on "[Capital Projects Dashboard](#)".

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

None

City of Franklin Capital Investment Projects Dashboard

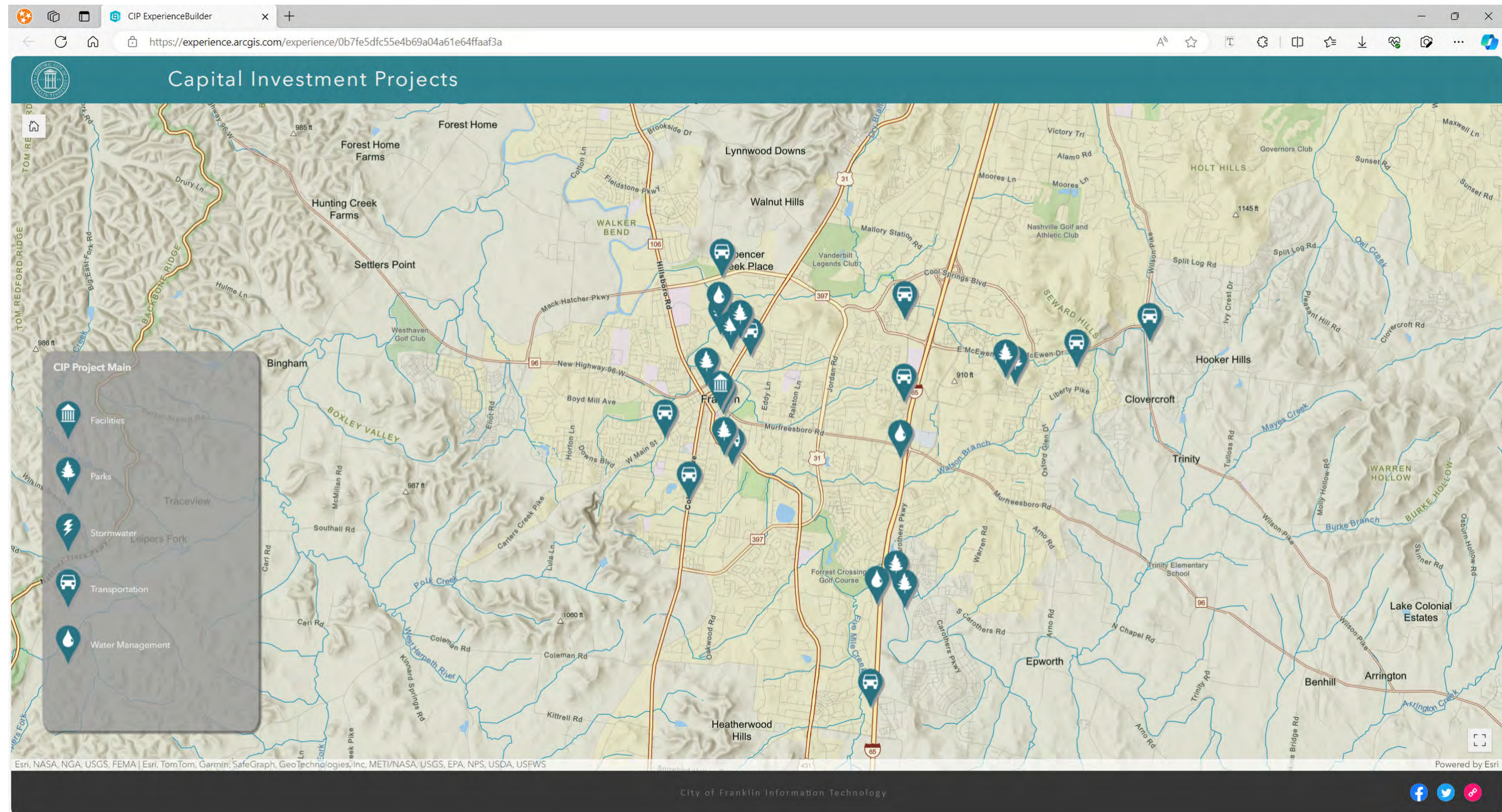


Image Captured from City of Franklin Website on 02/15/2024

Go to www.franklinton.gov >> Hover over "Our City" >> Click on "City Projects" >> Click on "[Capital Projects Dashboard](#)"

OR

Go to www.franklinton.gov >> Hover over "Business" >> Click on "City Projects" >> Click on "[Capital Projects Dashboard](#)"