



Meeting Agenda

Capital Investment Committee

Thursday, July 25, 2024

3:30 PM

Board Room

CALL TO ORDER

SETTING OF THE AGENDA

1. Consideration Of Changes In Agenda And Setting The Agenda
 - i. Discussion Of Removal Of Items From Consent/Changes Not Requiring A Vote
 - ii. Proposed Changes To The Agenda
 - iii. 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@franklinton.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
June 27, 2024 Capital Investment Committee Meeting

NEW BUSINESS

3. Consideration Of DRAFT Resolution 2024-56, A Resolution To Approve The On-Call Professional Services Agreements With Multiple Qualified Consultants For: Construction Engineering And Inspection Services, Engineering Services, And Surveying Services

Sponsors: Paul Holzen, Jonathan Marston

4. Consideration Of DRAFT Resolution 2024-58, A Resolution Authorizing The City Administrator To Approve Agreements And The Use Of Condemnation, If Necessary, To Acquire Rights-of-Way And/Or Easements For The "Del Rio Pike Roadway Widening And Culvert Improvement Project"

Sponsors: Paul Holzen, Dustin Walcott

5. Consideration Of DRAFT Resolution 2024-67, A Resolution Authorizing The City Administrator To Execute Department Of The Army Flood Proofing Participation Agreement Amendments And City Of Franklin Homeowner Funding Agreement Amendments For The Harpeth River Flood Risk Management Project (U.S. Army Corps Of Engineers Home Raising Program)

Sponsors: Paul Holzen, Jonathan Marston, William Banks

6. Consideration Of DRAFT COF Contract No. 2024-0156, With HDR Construction Control Corporation (HDR) For Construction Engineering And Inspection (CEI) On East McEwen Drive Phase 4 Improvements Project (PIN 125418.00)

Sponsors: Paul Holzen, Jonathan Marston, David Hodnett

7. Consideration Of COF Contract No. 2024-0176, With Middle Tennessee Electric Membership Corporation For A Relocation Agreement For The Lewisburg Pike (SR-106 / US-431) Sidewalk Project At An Estimated Cost Of \$104,771.89

Sponsors: Paul Holzen, Dustin Walcott

8. Consideration Of COF Contract No. 2024-0250, With Reck-Ritz Holdings LLC (The Caroline PUD Subdivision) For A Road Impact Fee Offset Agreement For An Amount Not To Exceed \$591,280

Sponsors: Paul Holzen, Jimmy Wiseman

9. Capital Projects Dashboard And Status Updates For July 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.



File #: 21-0376

DATE: June 18, 2024
TO: Capital Investment Committee
FROM: Paul Holzen, Director of Engineering
Jonathan Marston, Asst. Director of Engineering

SUBJECT:

Consideration Of DRAFT Resolution 2024-56, A Resolution To Approve The On-Call Professional Services Agreements With Multiple Qualified Consultants For: Construction Engineering And Inspection Services, Engineering Services, And Surveying Services

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Resolution 2024-56.

BACKGROUND/STAFF COMMENTS:

The On-Call Professional Services Agreements (PSAs) with consultants for: Construction Engineering & Inspection (CEI) Services, Engineering Services, Surveying Services are utilized primarily by the Engineering Department as additional technical resources in the development of the City's many capital projects. However, this resolution and its accompanying PSAs are structured in a way to allow any City department to utilize the technical services provided by these consultants to perform work that has been authorized by the BOMA or on its behalf.

The consultants were selected through a competitive Requests For Qualifications (RFQ) process, reviewed and graded by a technical review committee. Multiple, top scoring consultants were selected for each of the 3 service categories of on-call contract to be awarded. In total, staff proposes that 11 on-call contracts be awarded via Resolution 2024-56. These contracts include:

Construction Engineering and Inspection (CEI) Services	
COF Contract No.	Consultant Name
2024-0142	Civil & Environmental Consultants, Inc. (CEC)
2024-0143	The Corradino Group, Inc. (Corradino)
2024-0144	ECS Southeast, LLC (ECS)
2024-0145	TTL, Inc. (TTL)

Engineering Services	
COF Contract No.	Consultant Name
2024-0146	Alfred Benesch & Company (Benesch)
2024-0147	Rummel, Klepper & Kahl, LLP (RK&K)
2024-0148	CT Consultants, Inc. (CTC)

Surveying Services	
COF Contract No.	Consultant Name
2024-0149	Civil & Environmental Consultants, Inc. (CEC)
2024-0150	M2 Group, LLC (M2)
2024-0151	Wiser Consultants, LLC (Wiser)
2024-0152	Thouvenot, Wade & Moerchen, Inc. (TWM)

The award of multiple contracts for each category of technical service should ensure that at least 1 on-call consultant for each service category has the available personnel to perform tasks when needed by the City. Resolution 2024-56 will allow city staff to select the most appropriate and available consultant for a given task work order and to negotiate scope & fee for said work order, with the City Administrator approving the final work order.

FINANCIAL IMPACT:

Funding will be allocated as needed for individual work orders. In most cases, staff anticipates utilizing already established capital project funding for specific capital projects. Staff also anticipates that funding approval could come through other avenues, including: existing funds identified in the annual operating budget OR funding approved on a case-by-case basis by the BOMA or on its behalf by the City Administrator.

RECOMMENDATION:

Staff recommends that Resolution 2024-56 be recommended to the Board of Mayor and Aldermen for approval.

RESOLUTION 2024-56

A RESOLUTION TO APPROVE THE TERM PROFESSIONAL SERVICES AGREEMENTS WITH MULTIPLE QUALIFIED CONSULTANTS FOR: CONSTRUCTION ENGINEERING AND INSPECTION SERVICES, ENGINEERING SERVICES, AND SURVEYING SERVICES

WHEREAS, the Board of Mayor and Aldermen of the City of Franklin, Tennessee (“BOMA”) desires to move toward the effective and efficient administration of City business; and

WHEREAS, on January 12, 2024, the City posted three (3) separate Requests for Qualifications (“RFQs”) on the City’s website to solicit interest from individuals or consultants to render: Construction Engineering and Inspection (“CEI”) Services, Engineering Services, and Surveying Services; and

WHEREAS, said services would be provided for a term of five (5) years through a Professional Services Agreement (“PSA”), awarded to one (1) or more consultants for each of the three (3) services types; and

WHEREAS, by the posted deadline of February 9, 2024, the City received forty-seven (47) responses to its three (3) RFQs for services, twelve (12) for CEI Services, twenty-three (23) for Engineering Services, and twelve (12) for Surveying Services; and

WHEREAS, City staff carefully reviewed and rated each consultant’s submittal against the criteria provided within the RFQ document to which the consultant responded, which allowed the creation of a comparative score sheet for each of the three (3) service categories; and

WHEREAS, City staff recommends approval of PSAs with the consultants for the specifically requested services as listed in the three (3) tables below:

Construction Engineering and Inspection (CEI) Services	
COF Contract No.	Consultant Name
2024-0142	Civil & Environmental Consultants, Inc. (CEC)
2024-0143	The Corradino Group, Inc. (Corradino)
2024-0144	ECS Southeast, LLC (ECS)
2024-0145	TTL, Inc. (TTL)

Engineering Services	
COF Contract No.	Consultant Name
2024-0146	Alfred Benesch & Company (Benesch)
2024-0147	Rummel, Klepper & Kahl, LLP (RK&K)
2024-0148	CT Consultants, Inc. (CTC)

Surveying Services	
COF Contract No.	Consultant Name
2024-0149	Civil & Environmental Consultants, Inc. (CEC)
2024-0150	M2 Group, LLC (M2)
2024-0151	Thouvenot, Wade & Moerchen, Inc. (TWM)
2024-0152	Wiser Consultants, LLC (Wiser)

WHEREAS, to facilitate development reviews and capital project delivery more effectively and efficiently, the BOMA finds it in the City's best interest to authorize the City Administrator to issue Work Orders associated with the approved term PSAs; and

WHEREAS, the funding to be authorized for expenditure in association with the term PSAs shall be approved by the BOMA as: part of the City's Annual Operating & Capital Equipment Budget, from capital funding approved by the BOMA as part of the approved Capital Investment Program (CIP), an individually project by the BOMA, or as a project approved by the City Administrator on behalf of the BOMA.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, AS FOLLOWS:

Section 1. Approval of the consultant selections and Term Professional Services Agreements with the consultants for the specifically requested services as listed in the three (3) tables below:

Construction Engineering and Inspection (CEI) Services		
COF Contract No.	Consultant Name	Exhibit
2024-0142	Civil & Environmental Consultants, Inc. (CEC)	Exhibit A
2024-0143	The Corradino Group, Inc. (Corradino)	Exhibit B
2024-0144	ECS Southeast, LLC (ECS)	Exhibit C
2024-0145	TTL, Inc. (TTL)	Exhibit D

Engineering Services		
COF Contract No.	Consultant Name	Exhibit
2024-0146	Alfred Benesch & Company (Benesch)	Exhibit A
2024-0147	Rummel, Klepper & Kahl, LLP (RK&K)	Exhibit B
2024-0148	CT Consultants, Inc. (CTC)	Exhibit C

Surveying Services		
COF Contract No.	Consultant Name	Exhibit
2024-0149	Civil & Environmental Consultants, Inc. (CEC)	Exhibit A
2024-0150	M2 Group, LLC (M2)	Exhibit B
2024-0151	Thouvenot, Wade & Moerchen, Inc. (TWM)	Exhibit C
2024-0152	Wiser Consultants, LLC (Wiser)	Exhibit D

Section 2. The Department Director and/or Assistant Department Director of any City Department shall be authorized to issue Work Orders associated with the BOMAs approved Term PSAs as listed in Section 1 above in the pursuit of facilitating City business more effectively and efficiently.

Section 3. The City Administrator shall be authorized to approved and execute Work Orders associated with the BOMAs approved Term PSAs as listed in Section 1 above.

Section 4. All funding to be authorized for expenditure in association with the term PSAs shall be approved by the BOMA as: part of the City's Annual Operating & Capital Equipment Budget, from capital funding approved by the BOMA as part of the approved Capital Investment Program (CIP), an individually project by the BOMA, or as a project approved by the City Administrator on behalf of the BOMA.

IT IS SO RESOLVED AND DONE on this ____ day of _____, 20__.

ATTEST:

CITY OF FRANKLIN, TENNESSEE:

By: _____
Eric S. Stuckey
City Administrator

By: _____
Dr. Ken Moore
Mayor

Approved as to Form:

By: _____
Shauna R. Billingsley
City Attorney

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2024-0142**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and INSERT CONSULTANT NAME CIVIL & ENVIRONMENTAL CONSULTANTS, INC. hereinafter referenced as Consultant, who mutually agree as follows:

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

**INSERT PROJECT NAME AND DESCRIPTION TERM CONSTRUCTION
ENGINEERING & INSPECTION (CEI) SERVICES**

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.

~~3.~~ _____

~~4.~~ Consultant shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A. Individual Work Orders shall be issued by the City Engineer, approved by the City Administrator, and shall be subject to all terms of this Agreement. in the Amount of (enter contract amount in words) (\$enter contract amount in figures).

~~4.~~ _____

~~5.~~ This Agreement shall terminate no later than five (5) years from the date of execution.

The Board of Mayor and Aldermen Approved this Agreement on the
_____ Day of _____ 20~~21~~²⁴_____.

DRAFT

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

COF CONTRACT NO. 2024-0142

**ATTACHMENT A
SCOPE OF SERVICES**

- I. **Civil & Environmental Consultants, Inc.** ("Consultant") is pleased to provide this proposal for term CEI services to the **City of Franklin, Tennessee** ("City"). It is anticipated that this contract will be in effect for a five (5) year period. Individual Work Orders will be assigned on an as needed basis.
- II. **WORK ORDER REQUEST PROCEDURE**
- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
 - B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
 - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
 - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on a calendar year basis for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;
 - c. An explanation of how the cost was determined; and
 - d. A schedule for completion of the task, including a completion date.
 - C. Individual work orders shall be issued by the City Engineer and approved by the City Administrator. Work Orders will include the Task Proposal as an attachment, in writing prior to any work being completed.
 - D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
 - E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.
- III. **MUNICIPAL SERVICES FEE SCHEDULE**
- A. Hourly rates include compensation, benefits, overhead and fee.
 - B. Hourly rates include use of a company vehicle incidental Mileage for field construction staff classification.
 - C. Direct Reimbursable Expenses, if required, will be negotiated at cost on a lump sum basis as needed per the individual work orders.

(See following page)

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.
117 SEABOARD LANE • SUITE E-100
FRANKLIN, TENNESSEE 37067
PHONE: 615-333-7797 • FAX: 615-333-7751
E-MAIL: nashville@cecinc.com

City of Franklin Services

Fee Schedule

January 1, 2024 through December 31, 2024

PROFESSIONAL SERVICES

Classification	Rate/Hour
Senior Principal.....	\$276
Principal.....	\$254
Senior Project Manager	\$231
Project Manager III	\$214
Project Manager II	\$196
Project Manager I	\$173
Assistant Project Manager.....	\$150
Project Consultant / Geologist / Ecologist / Environmental Scientist.....	\$137
Staff Consultant / Geologist / Ecologist / Environmental Scientist	\$130
Designer	\$155
Draftsperson / CADD Operator.....	\$ 92
Senior Field Technician.....	\$112
Environmental Technician/Intern.....	\$ 70
Senior Land Surveyor.....	\$179
Assistant Project Surveyor.....	\$144
Survey Technician IV	\$127
Survey Technician III.....	\$117
Survey Technician II.....	\$104
Survey Technician I.....	\$ 91
Administrative Assistant	\$ 89
Administrative Manager	\$100

DIRECT EXPENSES

Printing and Reproduction *
Miscellaneous Reimbursables *

* As directed by the City Engineer on a project-by-project basis

CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2024-0143

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and INSERT CONSULTANT NAME THE CORRADINO GROUP 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:

TERM CONSTRUCTION ENGINEERING & INSPECTION (CEI)
SERVICES INSERT PROJECT NAME AND DESCRIPTION

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. Individual work orders shall be issued by the City Engineer, -and approved by the City Administrator and shall be subject to all terms of this Agreement. in the Amount of (enter contract amount in words) (\$enter contract amount in figures).
- 4.5. This Agreement shall terminate no later than five (5) years from the date of execution.

The Board of Mayor and Aldermen Approved this Agreement on the
_____ Day of _____ 20~~24~~²¹_____.

DRAFT

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

COF CONTRACT NO. 2024-0143

**ATTACHMENT A
SCOPE OF SERVICES**

I. **The Corradino Group** ("Consultant") is pleased to provide this proposal for term CEI services to the **City of Franklin, Tennessee** ("City"). It is anticipated that this contract will be in effect for a five (5) year period. Individual Work Orders will be assigned on an as needed basis.

II. **WORK ORDER REQUEST PROCEDURE**

- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
- B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
 - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
 - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on a calendar year basis for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;
 - c. An explanation of how the cost was determined; and
 - d. A schedule for completion of the task, including a completion date.
- C. Individual work orders shall be issued by the City Engineer and approved by the City Administrator. Work Orders will include the Task Proposal as an attachment, in writing prior to any work being completed.
- D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
- E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.

III. **MUNICIPAL SERVICES FEE SCHEDULE**

- A. Hourly rates include compensation, benefits, overhead and fee.
- B. Hourly rates include use of a company vehicle incidental Mileage for field construction staff classification.
- C. Direct Reimbursable Expenses, if required, will be negotiated at cost on a lump sum basis as needed per the individual work orders.

(See following page)

Corradino’s 2024 Municipal Service Fee Schedule

**City of Franklin
On-Call Construction Engineering and Inspection Services
May 13, 2024**

Per the City’s request, The Corradino Group, Inc. (Corradino) is providing our 2024 Municipal Service Fee Schedule for the above referenced contract. As noted, this Professional Services Contract is for a period of five years from date of execution. Hourly rate schedule subject to change on each contract anniversary, subject to approval by City Engineer.

Project Manager-----	\$200.00 /hour
Project Inspector -----	\$145.00 /hour
Administrative -----	\$ 90.00 /hour

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2024-0144**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and INSERT CONSULTANT NAME ECS SOUTHEAST, LLC 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:

**TERM CONSTRUCTION ENGINEERING & INSPECTION (CEI)
SERVICES INSERT PROJECT NAME AND DESCRIPTION**

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. Individual work orders shall be issued by the City Engineer, approved by the City Administrator and shall be subject to all terms of this Agreement. in the Amount of (enter contract amount in words) (\$enter contract amount in figures).
 5. This Agreement shall terminate no later than five (5) years from the date of execution.
- 4.

The Board of Mayor and Aldermen Approved this Agreement on the
_____ Day of _____ 20~~24~~²¹__.

DRAFT

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

COF CONTRACT NO. 2024-0144

**ATTACHMENT A
SCOPE OF SERVICES**

- I. **ECS Southeast, LLC** ("Consultant") is pleased to provide this proposal for term CEI services to the **City of Franklin, Tennessee** ("City"). It is anticipated that this contract will be in effect for a five (5) year period. Individual Work Orders will be assigned on an as needed basis.
- II. **WORK ORDER REQUEST PROCEDURE**
- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
 - B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
 - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
 - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on a calendar year basis for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;
 - c. An explanation of how the cost was determined; and
 - d. A schedule for completion of the task, including a completion date.
 - C. Individual work orders shall be issued by the City Engineer and approved by the City Administrator. Work Orders will include the Task Proposal as an attachment, in writing prior to any work being completed.
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 - E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.
- III. **MUNICIPAL SERVICES FEE SCHEDULE**
- A. Hourly rates include compensation, benefits, overhead and fee.
 - B. Hourly rates include use of a company vehicle incidental Mileage for field construction staff classification.
 - C. Direct Reimbursable Expenses, if required, will be negotiated at cost on a lump sum basis as needed per the individual work orders.

(See following page)



2024 ECS SOUTHEAST, LLC FEE SCHEDULE

PERSONNEL

Principal Engineer	.....	\$ 225.00 /hour
Senior Engineer/Project Manager	.....	\$ 175.00 /hour
Project Manager	.....	\$ 135.00 /hour
Field Engineer**	.....	\$ 95.00 /hour
Engineering Field Technician**	.....	\$ 65.00 /hour
Structural Steel/Specialty Technician - Shop or Field**		
Senior Level AWS CWI (NDE: UT, MT, PT, RI)	.....	\$ 125.00 /hour
AWS CWI (VT with no NDE)	.....	\$ 105.00 /hour
Administrative Support	.....	\$ 75.00 /hour
Project Setup	.....	\$ 250.00 /each
Project Closeout Letter	.....	\$ 250.00 /each
Mileage Charge	.....	\$ 0.75 /mile

Note: Charges for engineering and technical personnel will be made for time spent in the field, in engineering analysis, in preparation of reports, and in travel portal to portal from our local office. There will be a trip charge in lieu of mileage. For scheduling requests received without sufficient notice as stated within the ECS proposal, services will be staffed with available personnel at the associated unit rates.

****** Overtime will be charged at the personnel standard rate x 1.5 for over 8 hours per day and outside normal business hours of 6:00 am to 6:00 pm, holidays, Saturday, or Sunday. There will be a 4-hour minimum field charge for field related services (not applicable for sample/specimen pickups).

EQUIPMENT

Daily Equipment	.....	\$ 30.00 /day
Nuclear Density Gauge	.....	\$ 40.00 /day
Ultrasonic Equipment	.....	\$ 125.00 /day
GPR Equipment	.....	\$ 150.00 /day
Floor Flatness/Levelness Meter	.....	\$ 100.00 /day
Core Dilling Equipment	.....	\$ 150.00 /day
Rebound Hammer	.....	\$ 100.00 /day

EQUIPMENT AND LABORATORY

Standard/Modified Proctor (4-inch mold)	.....	\$ 185.00 /each
Standard/Modified Proctor (6-inch mold)	.....	\$ 215.00 /each
Atterberg Limits	.....	\$ 90.00 /each
Particle Size Analysis (with Hydrometer)	.....	\$ 125.00 /each
No. 200 Wash Sieve	.....	\$ 60.00 /each
Aggregate Gradation (Course or Fine)	.....	\$ 85.00 /each
Aggregate Gradation (Course and Fine Mixture)	.....	\$ 115.00 /each
California Bearing Ratio (Proctor not included)	.....	\$ 450.00 /each
Testing of Cylinders, Cubes, and Core Specimens		
Compressive Strength - Concrete Cylinders (including Reserves)	.....	\$ 18.00 /each
Compressive Strength - Grout/Mortar Cubes	.....	\$ 18.00 /each
Compressive Strength - Grout Prisms (CMU)	.....	\$ 30.00 /each
Core Specimen (including Sample Preparation)	.....	\$ 35.00 /each
Contractor Cast Cylinders or Grout Specimen (including Sample Preparation)	.....	\$ 50.00 /each
Asphalt Cores (Thickness and Bulk Density)	.....	\$ 35.00 /each

Note: Charges will be made for tests and equipment operated by ECS Southeast, LLP personnel in addition to personnel charges already listed. Additional equipment or laboratory test rates can be provided upon request.

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2024-0145**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and INSERT CONSULTANT NAME TTL, INC. hereinafter referenced as Consultant, who mutually agree as follows:

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

**TERM CONSTRUCTION ENGINEERING & INSPECTION (CEI)
SERVICES INSERT PROJECT NAME AND DESCRIPTION**

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. Individual work orders shall be issued by the City Engineer, approved by the City Administrator and shall be subject to all terms of this Agreement. ~~in the Amount of (enter contract amount in words) (\$enter contract amount in figures).~~
5. This Agreement shall terminate no later than five (5) years from the date of execution.
- 4.6. _____

The Board of Mayor and Aldermen Approved this Agreement on the
_____ Day of _____ 20~~24~~²¹_____.

DRAFT

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

COF CONTRACT NO. 2024-0145

**ATTACHMENT A
SCOPE OF SERVICES**

I. **TTL, Inc** ("Consultant") is pleased to provide this proposal for term CEI services to the **City of Franklin, Tennessee** ("City"). It is anticipated that this contract will be in effect for a five (5) year period. Individual Work Orders will be assigned on an as needed basis.

II. **WORK ORDER REQUEST PROCEDURE**

- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
- B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
 - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
 - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on a calendar year basis for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;
 - c. An explanation of how the cost was determined; and
 - d. A schedule for completion of the task, including a completion date.
- C. Individual work orders shall be issued by the City Engineer and approved by the City Administrator. Work Orders will include the Task Proposal as an attachment, in writing prior to any work being completed.
- D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
- E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.

III. **MUNICIPAL SERVICES FEE SCHEDULE**

- A. Hourly rates include compensation, benefits, overhead and fee.
- B. Hourly rates include use of a company vehicle incidental Mileage for field construction staff classification.
- C. Direct Reimbursable Expenses, if required, will be negotiated at cost on a lump sum basis as needed per the individual work orders.

(See following page)

SCHEDULE OF FEES

Personnel*

Principal I	\$ 280.00/hour
Senior Project Professional VII	\$278.00/hour
Senior Project Professional III	\$ 236.00/hour
Senior Project Professional II	\$ 228.00/hour
Senior Project Professional I	\$ 217.00/hour
Professional Land Surveyor III	\$200.00/hour
Project Manager V	\$190.00/hour
2-Person Survey Crew	\$190.00/hour
Project Professional V	\$ 187.00/hour
Professional Land Surveyor II	\$180.00/hour
Project Manager IV	\$ 180.00/hour
Project Manager III	\$168.00/hour
Project Professional III	\$ 163.00/hour
Project Professional II	\$ 151.00/hour
Professional Land Surveyor I	\$150.00/hour
Project Professional I	\$ 140.00/hour
NDT Steel/AWS CWI & ASNT Level I	\$121.00/hour
Senior Project Technician IV	\$116.00/hour
Senior Project Technician III	\$ 103.00/hour
Senior Project Technician II	\$ 97.00/hour
Senior Project Technician I	\$ 91.00/hour
Project Technician V	\$ 76.00/hour
Project Administrator II	\$ 76.00/hour
Project Administrator I	\$ 68.00/hour
Project Technician III	\$ 65.00/hour

* Rates will be multiplied by 1.5 for services required between 6:00 pm and 6:00 am, for time in excess of 8 hours per day and for any time on Saturday, Sunday, or Holidays.

Laboratory Services:**Soils:**

01. Field Density Testing by Nuclear Methods (Daily Equipment Charge)	\$60.00 / daily
02. Natural Moisture Content (ASTM D2216).....	\$6.50 / test
03. Atterberg Limits (ASTM D4318).....	\$97.50 / test
04. Material in Soils Finer than the No. 200 Sieve by Washing (ASTM D1140).....	\$70.00 / test
05. Grain Size, Sieve Analysis, with hydrometer (ASTM D7928)	\$225.00 / test
06. Grain Size, Sieve Analysis, without hydrometer (ASTM D6913)	\$95.00 / test
07. Moisture-Density Curve (Requires Atterberg Limits Not Included in Test Fee)	
a. Standard Proctor (ASTM D698).....	\$145.00 / test
b. Modified Proctor (ASTM D1557)	\$170.00 / test
c. One Point	\$75.00 / test
08. Laboratory CBR (ASTM D1883)	
a. In-situ	\$275.00 / test
b. Remolded (Not Including Proctor).....	\$395.00 / test
09. Unconfined Compression Test:	
a. Soil Specimen (2-1/2-inch or 3-inch) (ASTM D2166)	\$185.00 / test
10. One-Dimensional Consolidation Test (1/4 to 16-ton loading) (ASTM D2435)	
(Add \$40.00 for each unload-reload cycle)	
a. Undisturbed Sample	\$450.00 / test
b. Remolded Sample (Proctor Not Included)	\$495.00 / test
11. Hydraulic Conductivity (Permeability), Flexible Wall/Backpressure (ASTM D5084)	\$425.00 / test

Rock:

01. Unconfined Compression Test of Rock Core Specimen (BX or NX), (ASTM D7012)	\$195.00 / test
02. Splitting Tensile Strength of Rock (Axial)	\$ 795.00 / test

Concrete:

01. Curing & Compression Testing of Concrete	\$16.00 / each
02. Curing & Compression Testing of Concrete (Made by Others)	\$27.50 / each
03. Flexural Strength of Concrete Beams (ASTM C78).....	\$49.50 / each
04. Sawing, Curing, Capping and Breaking Thin-Wall Concrete Cores (ASTM C42)	\$60.00 / each
05. Floor Flatness / Floor Levelness Testing (ASTM E1155).....	\$0.065 / sq. ft.
06. Windsor Probe Testing (ASTM C803)	\$125.00 / test
07. Monotonic Tension Test (ASTM A1034).....	\$175.00 / test

Aggregates:

01. Specific Gravity and Absorption, Coarse Aggregate (ASTM C127)	\$85.00 / test
02. Specific Gravity and Absorption, Fine Aggregate (ASTM C128).....	\$85.00 / test
03. Sieve Analysis of Fine and Coarse Aggregates (ASTM C136).....	\$110.00 / test
04. Soundness of Aggregates, Sodium or Magnesium Sulfate (ASTM C88)	
a. Five Cycles	\$475.00 / test
b. Bulk Sample Preparation.....	\$30.00 / each

Asphalt:

01. Marshall Mix Design (KM 64-411-90).....	\$600.00 / each
02. Gradation & Asphalt Content (Extraction) (ASTM D 2172)	\$250.00 / each
03. Unit Weight & Thickness (ASTM D 3549)	\$30.00 / each
04. Maximum Theoretical Density (ASTM D 2041).....	\$85.00 / each

Masonry & Mortar:

- 01. Absorption and As-Received Moisture, Masonry Block Units, Set of 3 (ASTM C 90) \$195.00 / each
- 02. Curing & Compression Testing of Grout or Mortar (ASTM C 109) \$26.50 / each
- 03. Compression Test, Masonry Block Units, Set of 3 (ASTM ASTM C 90) \$165.00 / each
- 04. Equivalent Thickness Masonry Block Unit, Set of 3 (ASTM C 90) \$95.00 / each

Specialty Testing:

Based on our experience and network of contacts we can provide or develop most specialty tests on an individual basis as requested.

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2024-0146**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and INSERT CONSULTANT NAME BENESCH 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:

INSERT PROJECT NAME AND DESCRIPTION TERM ENGINEERING SERVICES

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. Individual work orders shall be issued by the City Engineer, approved by the City Administrator and shall be subject to all terms of this Agreement. in the Amount of (enter contract amount in words) (\$enter contract amount in figures).
5. This Agreement shall terminate no later than five (5) years from the date of execution.

4.

The Board of Mayor and Aldermen Approved this Agreement on the
_____ Day of _____ 20~~24~~²¹__.

DRAFT

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

COF CONTRACT NO. 2024-0146

**ATTACHMENT A
SCOPE OF SERVICES**

- I. **Benesch** ("Consultant") is pleased to provide this proposal for term engineering services to the **City of Franklin, Tennessee** ("City"). It is anticipated that this contract will be in effect for a five (5) year period. Individual Work Orders will be assigned on an as needed basis.
- II. **WORK ORDER REQUEST PROCEDURE**
- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
 - B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
 - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
 - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on a calendar year basis for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;
 - c. An explanation of how the cost was determined; and
 - d. A schedule for completion of the task, including a completion date.
 - C. Individual work orders shall be issued by the City Engineer and approved by the City Administrator. Work Orders will include the Task Proposal as an attachment, in writing prior to any work being completed.
 - D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
 - E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.
- III. **MUNICIPAL SERVICES FEE SCHEDULE**
- A. Hourly rates include compensation, benefits, overhead and fee.
 - B. Hourly rates include use of a company vehicle incidental Mileage for field construction staff classification.
 - C. Direct Reimbursable Expenses, if required, will be negotiated at cost on a lump sum basis as needed per the individual work orders.

(See following page)



Revised 01-01-2024

Tennessee
HOURLY RATE TABLE

<u>CLASSIFICATION</u>	<u>RATE</u>
Administrative	\$90.00
Technologist I	\$75.00
Technologist II	\$95.00
Senior Technologist	\$155.00
Designer I	\$105.00
Designer II	\$120.00
Senior Designer	\$145.00
Project Engineer/Architect I	\$135.00
Project Engineer/Architect II	\$145.00
Senior Project Engineer/Architect	\$150.00
Project Mgr. I/Technical Mgr. I	\$155.00
Project Mgr. II/Technical Mgr. II	\$165.00
Sr. Project Mgr./Sr. Technical Mgr.	\$180.00
Group Manager	\$205.00
Principal	\$240.00

DIRECT REIMBURSABLE EXPENSES

Permit Fees At Cost

- Direct Reimbursables if required will be negotiated at cost on a lump sum basis as needed per the individual work orders.
- Subconsultants for specialty services will be included as direct expense at cost.
- The above rates are all inclusive; there are no extra charges or fees.
- Rates are subject to change on a calendar year basis

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2024-0147**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and INSERT CONSULTANT NAME RUMMERL, KLEPPER & KAHL, LLC 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:

TERM ENGINEERING SERVICES INSERT PROJECT NAME AND DESCRIPTION

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. Individual work orders shall be issued by the City Engineer, approved by the City Administrator and shall be subject to all terms of this Agreement. in the Amount of (enter contract amount in words) (\$enter contract amount in figures).
5. This Agreement shall terminate no later than five (5) years from the date of execution.
- 4.—

The Board of Mayor and Aldermen Approved this Agreement on the
_____ Day of _____ 20~~24~~²¹__.

DRAFT

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

COF CONTRACT NO. 2024-0147

**ATTACHMENT A
SCOPE OF SERVICES**

- I. **Rummel, Klepper & Kahl, LLP** ("Consultant") is pleased to provide this proposal for term engineering services to the **City of Franklin, Tennessee** ("City"). It is anticipated that this contract will be in effect for a five (5) year period. Individual Work Orders will be assigned on an as needed basis.

II. **WORK ORDER REQUEST PROCEDURE**

- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
- B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
- a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
 - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on a calendar year basis for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;
 - c. An explanation of how the cost was determined; and
 - d. A schedule for completion of the task, including a completion date.
- C. Individual work orders shall be issued by the City Engineer and approved by the City Administrator. Work Orders will include the Task Proposal as an attachment, in writing prior to any work being completed.
- D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
- E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.

III. **MUNICIPAL SERVICES FEE SCHEDULE**

- A. Hourly rates include compensation, benefits, overhead and fee.
- B. Hourly rates include use of a company vehicle incidental Mileage for field construction staff classification.
- C. Direct Reimbursable Expenses, if required, will be negotiated at cost on a lump sum basis as needed per the individual work orders.

(See following page)

HOURLY RATES

Position Title	Billing Rate
Director	\$ 320.00
Sr. Project Delivery Leader	\$ 281.00
Project Delivery leader	\$ 235.00
Project/Technical Manager	\$ 195.00
Project Engineer III	\$ 172.00
Project Engineer II	\$ 160.00
Project Engineer I	\$ 150.00
Engineer II	\$ 140.00
Engineer I	\$ 120.00
Project Manager - CEI	\$ 197.00
Construction Manager	\$ 145.00
SR. CEI Inspector	\$ 102.00
CEI Inspector	\$ 90.00
Project Scientist III	\$ 155.00
Project Scientist II	\$ 125.00
Project Scientist I	\$ 104.00
Scientist II	\$ 94.00
Scientist I	\$ 78.00
Sr. CADD Technician	\$ 109.00
CADD Technician	\$ 88.00
Project Assistant	\$ 75.00

RK&K

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2024-0148**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and INSERT CONSULTANT NAME CT CONSULTANTS, INC. hereinafter referenced as Consultant, who mutually agree as follows:

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

TERM ENGINEERING SERVICES INSERT PROJECT NAME AND DESCRIPTION

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. Individual work orders shall be issued by the City Engineer, approved by the City Administrator and shall be subject to all terms of this Agreement. in the Amount of (enter contract amount in words) (\$enter contract amount in figures).
5. This Agreement shall terminate no later than five (5) years from the date of execution.

4.

The Board of Mayor and Aldermen Approved this Agreement on the
_____ Day of _____ 20~~24~~²¹__.

DRAFT

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.

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- 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

COF CONTRACT NO. 2024-0148

**ATTACHMENT A
SCOPE OF SERVICES**

I. **CT Consultants, Inc.** ("Consultant") is pleased to provide this proposal for term engineering services to the **City of Franklin, Tennessee** ("City"). It is anticipated that this contract will be in effect for a five (5) year period. Individual Work Orders will be assigned on an as needed basis.

II. **WORK ORDER REQUEST PROCEDURE**

- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
- B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
 - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
 - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on a calendar year basis for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;
 - c. An explanation of how the cost was determined; and
 - d. A schedule for completion of the task, including a completion date.
- C. Individual work orders shall be issued by the City Engineer and approved by the City Administrator. Work Orders will include the Task Proposal as an attachment, in writing prior to any work being completed.
- D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
- E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.

III. **MUNICIPAL SERVICES FEE SCHEDULE**

- A. Hourly rates include compensation, benefits, overhead and fee.
- B. Hourly rates include use of a company vehicle incidental Mileage for field construction staff classification.
- C. Direct Reimbursable Expenses, if required, will be negotiated at cost on a lump sum basis as needed per the individual work orders.

(See following page)

2024 Municipal Services Fee Schedule

Principal	\$262.00
Senior Engineer/Architect	\$201.25
Project Engineer/Architect	\$175.25
Engineer 3/Architect 3	\$159.60
Engineer 2/Architect 2	\$147.25
Engineer 1/Architect 1	\$131.75
Designer 3	\$128.25
Designer 2	\$108.00
Engineer Intern	\$ 67.25
Survey Crew	\$183.75
Construction Rep 3	\$111.00
Technical Support	\$ 68.50

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2024-0149**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and INSERT CONSULTANT NAME CIVIL & ENVIRONMENTAL CONSULTANTS, INC. hereinafter referenced as Consultant, who mutually agree as follows:

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

INSERT PROJECT NAME AND DESCRIPTION PROFESSIONAL SURVEY SERVICES

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. Individual work orders shall be issued by the City Engineer, approved by the City Administrator and shall be subject to all terms of this Agreement. in the Amount of (enter contract amount in words) (\$enter contract amount in figures).
5. This Agreement shall terminate no later than five (5) years from the date of execution.

4.6.

The Board of Mayor and Aldermen Approved this Agreement on the
_____ Day of _____ 20~~24~~²¹__.

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.

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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.

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- 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.
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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

COF CONTRACT NO. 2024-0149
ATTACHMENT A
SCOPE OF SERVICES

- I. **Civil & Environmental Consultants, Inc.** ("Consultant") is pleased to provide this proposal for term survey services to the **City of Franklin, Tennessee** ("City"). It is anticipated that this contract will be in effect for a five (5) year period. Individual Work Orders will be assigned on an as needed basis.
- II. **WORK ORDER REQUEST PROCEDURE**
- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
 - B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
 - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
 - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on a calendar year basis for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;
 - c. An explanation of how the cost was determined; and
 - d. A schedule for completion of the task, including a completion date.
 - C. Individual work orders shall be issued by the City Engineer and approved by the City Administrator. Work Orders will include the Task Proposal as an attachment, in writing prior to any work being completed.
 - D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
 - E. During performance of the services, Consultant will keep the City appraised of the status of performance by delivering status reports as requested by the City.
- III. **MUNICIPAL SERVICES FEE SCHEDULE**
- A. Hourly rates include compensation, benefits, overhead and fee.
 - B. Hourly rates include use of a company vehicle incidental Mileage for field construction staff classification.
 - C. Direct Reimbursable Expenses, if required, will be negotiated at cost on a lump sum basis as needed per the individual work orders.

(See following page)

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.
117 SEABOARD LANE • SUITE E-100
FRANKLIN, TENNESSEE 37067
PHONE: 615-333-7797 • FAX: 615-333-7751
E-MAIL: nashville@cecinc.com

City of Franklin Services Fee Schedule

January 1, 2024 through December 31, 2024

PROFESSIONAL SERVICES

Classification	Rate/Hour
Senior Principal.....	\$276
Principal.....	\$254
Senior Project Manager	\$231
Project Manager III	\$214
Project Manager II	\$196
Project Manager I	\$173
Assistant Project Manager.....	\$150
Project Consultant / Geologist / Ecologist / Environmental Scientist.....	\$137
Staff Consultant / Geologist / Ecologist / Environmental Scientist	\$130
Designer	\$155
Draftsperson / CADD Operator.....	\$ 92
Senior Field Technician.....	\$112
Environmental Technician/Intern.....	\$ 70
Senior Land Surveyor.....	\$179
Assistant Project Surveyor.....	\$144
Survey Technician IV	\$127
Survey Technician III.....	\$117
Survey Technician II.....	\$104
Survey Technician I.....	\$ 91
Administrative Assistant	\$ 89
Administrative Manager	\$100

DIRECT EXPENSES

Printing and Reproduction *
Miscellaneous Reimbursables *

* As directed by the City Engineer on a project-by-project basis

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2024-0150**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and INSERT CONSULTANT NAME M2 GROUP, LLC 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:

**PROFESSIONAL SURVEY SERVICES
INSERT PROJECT NAME AND DESCRIPTION**

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. Individual work orders shall be issued by the City Engineer, approved by the City Administrator and shall be subject to all terms of this Agreement. in the Amount of (enter contract amount in words) (\$enter contract amount in figures).
5. This Agreement shall terminate no later than five (5) years from the date of execution.

The Board of Mayor and Aldermen Approved this Agreement on the
_____ Day of _____ 20~~24~~²¹_____.

DRAFT

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.
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- 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.
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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.
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- 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.
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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

COF CONTRACT NO. 2024-0150

**ATTACHMENT A
SCOPE OF SERVICES**

- I. **M2 Group, LLC** ("Consultant") is pleased to provide this proposal for term survey services to the **City of Franklin, Tennessee** ("City"). It is anticipated that this contract will be in effect for a five (5) year period. Individual Work Orders will be assigned on an as needed basis.
- II. **WORK ORDER REQUEST PROCEDURE**
- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
 - B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
 - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
 - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on a calendar year basis for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;
 - c. An explanation of how the cost was determined; and
 - d. A schedule for completion of the task, including a completion date.
 - C. Individual work orders shall be issued by the City Engineer and approved by the City Administrator. Work Orders will include the Task Proposal as an attachment, in writing prior to any work being completed.
 - D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
 - E. During performance of the services, Consultant will keep the City appraised of the status of performance by delivering status reports as requested by the City.
- III. **MUNICIPAL SERVICES FEE SCHEDULE**
- A. Hourly rates include compensation, benefits, overhead and fee.
 - B. Hourly rates include use of a company vehicle incidental Mileage for field construction staff classification.
 - C. Direct Reimbursable Expenses, if required, will be negotiated at cost on a lump sum basis as needed per the individual work orders.

(See following page)



2024 COF MUNICIPAL SERVICES SURVEY FEE SCHEDULE

<u>LABOR CATEGORY</u>	<u>RATE*</u>
PRINCIPAL	\$265.00
DIRECTOR OF SURVEYING	\$205.00
SURVEY MANAGER	\$190.00
SENIOR PROJECT SURVEYOR	\$180.00
PROJECT SURVEYOR	\$160.00
SENIOR SURVEY CAD TECHNICIAN	\$130.00
SURVEY CAD TECHNICIAN	\$115.00
1-PERSON SURVEY CREW	\$145.00
2-PERSON SURVEY CREW	\$205.00
UAV PILOT	\$185.00
PROJECT COORDINATOR	\$110.00
ADMINISTRATIVE	\$95.00

**ALL RATES ARE HOURLY UNLESS NOTED OTHERWISE*

<u>UNIT PRICING</u>	<u>RATE</u>
UAV LIDAR INSTRUMENT RECON-XT	\$1500.00/DAY
UAV PHOTOGRAMMETRIC INSTRUMENT ZENMUSE P1	\$500.00/DAY

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2024-0151**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and INSERT CONSULTANT NAMETHOUVENOT, WADE & MOERCHEN, INC. (TWM) 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:

**INSERT PROJECT NAME AND DESCRIPTION
PROFESSIONAL SURVEY SERVICES**

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. Individual work orders shall be issued by the City Engineer, approved by the City Administrator and shall be subject to all terms of this Agreement. -in the Amount of (enter contract amount in words) (\$enter contract amount in figures).
- 4.5. This Agreement shall terminate no later than five (5) years from the date of execution.

The Board of Mayor and Aldermen Approved this Agreement on the
_____ Day of _____ 20241—.

DRAFT

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.
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- 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.

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- 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.
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- 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.
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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

COF CONTRACT NO. 2024-0151

**ATTACHMENT A
SCOPE OF SERVICES**

- I. **TWM, Inc.** ("Consultant") is pleased to provide this proposal for term survey services to the **City of Franklin, Tennessee** ("City"). It is anticipated that this contract will be in effect for a five (5) year period. Individual Work Orders will be assigned on an as needed basis.
- II. **WORK ORDER REQUEST PROCEDURE**
- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
 - B. Following receipt of the request, the Consultant shall prepare a "Task Proposal" that includes the following components:
 - a. A written description of the requested task including: all components and subtasks, and including any clarifications of the descriptions provided in the request;
 - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on a calendar year basis for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;
 - c. An explanation of how the cost was determined; and
 - d. A schedule for completion of the task, including a completion date.
 - C. Individual work orders shall be issued by the City Engineer and approved by the City Administrator. Work Orders will include the Task Proposal as an attachment, in writing prior to any work being completed.
 - D. Consultant shall complete the task and provide all deliverables to the City Engineer, or his designee, as agreed upon in the Task Proposal.
 - E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.
- III. **MUNICIPAL SERVICES FEE SCHEDULE**
- A. Hourly rates include compensation, benefits, overhead and fee.
 - B. Hourly rates include use of a company vehicle incidental Mileage for field construction staff classification.
 - C. Direct Reimbursable Expenses, if required, will be negotiated at cost on a lump sum basis as needed per the individual work orders.

(See following page)

Insert 2024 Municipal Services Fee Schedule Here

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2024-0152**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and INSERT CONSULTANT NAME WISER CONSULTANTS 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:

**PROFESSIONAL SURVEY SERVICES
INSERT PROJECT NAME AND DESCRIPTION**

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. Individual work orders shall be issued by the City Engineer, approved by the City Administrator and shall be subject to all terms of this Agreement. -in the Amount of (enter contract amount in words) (\$enter contract amount in figures).
5. This Agreement shall terminate no later than five (5) years from the date of execution.

The Board of Mayor and Aldermen Approved this Agreement on the
_____ Day of _____ 20~~24~~²¹__.

DRAFT

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

COF CONTRACT NO. 2024-0152

**ATTACHMENT A
SCOPE OF SERVICES**

- I. **Wiser Consultants** ("Consultant") is pleased to provide this proposal for term survey services to the **City of Franklin, Tennessee** ("City"). It is anticipated that this contract will be in effect for a five (5) year period. Individual Work Orders will be assigned on an as needed basis.
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- A. Each task to be performed shall be set forth in a written request produced by the City Engineer, or his designee, with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
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 - b. The hourly or lump sum costs to perform the task. Hourly compensation shall be at the rates provided below, with allowances for a new rate schedule to become effective on a calendar year basis for each succeeding year. Updated fee schedules shall be reviewed and approved by the City Engineer prior to invoices;
 - c. An explanation of how the cost was determined; and
 - d. A schedule for completion of the task, including a completion date.
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 - E. During performance of the services, Consultant will keep the City apprised of the status of performance by delivering status reports as requested by the City.
- III. **MUNICIPAL SERVICES FEE SCHEDULE**
- A. Hourly rates include compensation, benefits, overhead and fee.
 - B. Hourly rates include use of a company vehicle incidental Mileage for field construction staff classification.
 - C. Direct Reimbursable Expenses, if required, will be negotiated at cost on a lump sum basis as needed per the individual work orders.

(See following page)

January 1, 2024 - December 31, 2024

Professional Services	Rate
Principal	\$240
Senior Project Manager	\$210
Project Manager	\$175
Project Engineer II	\$160
Project Engineer I	\$150
Engineer Intern II	\$140
Engineer Intern I	\$125
Engineering Technician	\$125
CAD Technician	\$100
Resident Project Representative	\$110
Principal Surveyor	\$170
Survey Project Manager	\$160
Registered Land Surveyor	\$145
Survey Crew Chief	\$130
Survey Crew Member	\$50
Survey Technician II	\$125
Survey Technician I	\$100
SUE Manager	\$125
SUE Technician	\$50
Senior Lidar Tech	\$125
Lidar Tech II	\$115
Lidar Tech I	\$100
Clerical Staff	\$85
Equipment	
Static Laser Scanner	\$ 500/Day
Mobile Lidar System	\$ 8,500/Day
UAV Lidar System	\$ 1,000/Day



File #: 21-0416

DATE: June 26, 2024
TO: Capital Investment Committee
FROM: Paul Holzen, Director of Engineering
Dustin Walcott, Staff Engineer

SUBJECT:

Consideration Of DRAFT Resolution 2024-58, A Resolution Authorizing The City Administrator To Approve Agreements And The Use Of Condemnation, If Necessary, To Acquire Rights-of-Way And/Or Easements For The "Del Rio Pike Roadway Widening And Culvert Improvement Project"

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Resolution 2024-58.

BACKGROUND/STAFF COMMENTS:

The primary purpose of this project is to widen a section of Del Rio Pike and to improve an existing culvert on Del Rio Pike near the Reese Farms subdivision. These improvements will consist of culvert extensions with endwalls and the reconstruction of the existing 2-lane road as a 3-lane road with a center turn lane, bike lanes, curb and gutter, and a sidewalk and grass buffer on the north side of Del Rio Pike.

The project team has completed the preliminary design and staff is ready to start right-of-way (ROW) and easement acquisitions. Fair market value for any necessary ROW and/or easements will be determined by a qualified appraiser. Four (4) properties are affected by this project. In an effort to expedite the process, staff seeks BOMA approval to authorize the City Administrator to approve agreements to acquire easements and/or ROW on behalf of the BOMA. Additionally, staff seeks approval to proceed with condemnation to acquire the necessary property and/or easements, but only if negotiations fail.

FINANCIAL IMPACT:

There is no direct financial impact associated with Resolution 2024-58. Expenses will occur as the individual property acquisitions are settled.

RECOMMENDATION:

Staff recommends that Resolution 2024-58 be recommended to the Board of Mayor and Aldermen for approval.

RESOLUTION 2024-58

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO APPROVE AGREEMENTS AND THE USE OF CONDEMNATION, IF NECESSARY, TO ACQUIRE RIGHTS-OF-WAY AND/OR EASEMENTS FOR THE DEL RIO PIKE ROADWAY WIDENING AND CULVERT IMPROVEMENT PROJECT (COF PROJECT NO. 2023-013)

WHEREAS, the Board of Mayor and Aldermen of the City of Franklin, Tennessee (the “BOMA”) has determined that the construction of certain improvements within the City limits are necessary, suitable, and desirable for the public welfare ; and

WHEREAS, these improvements are generally described as the rehabilitation of an existing culvert on Del Rio Pike with (2) 60” slip-lined pipe culvert extensions with headwalls, and the installation of (2) 12’ travel lanes with a 12’ center left turn lane, (2) 5’ bike lanes, curb and gutter on each side of the road, and a 6’ sidewalk with a 6’ grass buffer on the north side of Del Rio Pike.

WHEREAS, it will be necessary, in order to construct said improvements, for the City to obtain additional rights-of-way (“real property”) and easements (“real property interest”) from the owners of the properties listed on the attached Exhibit A; and

WHEREAS, the Board finds that it is in the best interests of the City of Franklin and for efficiency when acquiring rights-of-way and/or easements (“property acquisition”) for the Project to authorize the City Administrator to approve said property acquisition agreements on behalf of the BOMA; and

WHEREAS, the price to be paid for property acquisition shall be established by a qualified appraiser; and

WHEREAS, it has been general practice by the City, and by the Tennessee Department of Transportation (“TDOT”) on which this City practice is based, to allow the staff performing the acquisition negotiations the ability to increase the offer by up to an additional ten percent (10%) or Ten Thousand Dollars (\$10,000.00), whichever amount is greater, in an effort to successfully close the acquisition negotiations; and

WHEREAS, the BOMA expressly finds that the City has the power of eminent domain to extend public roads (see T.C.A. 29-17-301 *et seq.*) and to acquire easements and/or rights-of-way necessary for proper completion of the said improvements, and that the acquisition of such easements and/or rights-of-way is for a public purpose and for a public use, and that the acquisition of the private property hereinafter described is necessary to accomplish said public use; and

WHEREAS, the BOMA believes that the removal of certain contracts and purchases from the Board’s agenda provides for more expedient conduct of City business; and

WHEREAS, all property acquisition shall be reported to the BOMA as items approved by the City Administrator on behalf of the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, AS FOLLOWS:

SECTION 1. The City Administrator, the City Engineer, and the City Attorney are authorized to obtain the necessary rights-of-way, permanent easements, and/or temporary easements on and/or across the properties listed in Exhibit A hereto and may enter into agreements with property owners with respect to the compensation to be paid for the said rights-of-way and/or easements, so long as such amounts are reasonable and supported by a qualified appraisal.

SECTION 2. In an effort to avoid the condemnation process and to complete the property acquisition process as efficiently as possible, the City Administrator or his designee is authorized to increase the purchase price offer above appraised value by up to ten percent (10%) or Ten Thousand Dollars (\$10,000.00), whichever is greater.

SECTION 3. If an impasse is reached during negotiations with a property owner and condemnation is the only alternative, then the City Attorney is authorized to commence necessary condemnation proceedings. After condemnation proceedings have commenced, the City Administrator, the City Attorney, and the City Engineer are authorized to enter into settlement agreements with property owners with respect to the compensation to be paid for the said rights-of-way and easements, so long as such amounts are reasonable and supported by a qualified appraisal.

SECTION 4. All land acquisitions completed under the authority granted by this resolution shall be reported to the Board of Mayor and Aldermen.

IT IS SO RESOLVED AND DONE on this ____ day of _____, 20__.

ATTEST:

CITY OF FRANKLIN, TENNESSEE:

By: _____
Angie Skarp
City Recorder

By: _____
Dr. Ken Moore
Mayor

Approved as to Form:

By: _____
Shauna R. Billingsley
City Attorney

RESOLUTION 2024-58

EXHIBIT A

TAX MAP NUMBER	PARCEL NUMBER
064	11.02
063	1.00
064	1.00
063	1.04



File #: 21-0461

DATE: July 11, 2024
TO: Capital Investment Committee
FROM: Paul Holzen, Director of Engineering
Jonathan Marston, Asst. Director of Engineering
William Banks, Staff Engineer

SUBJECT:

Consideration Of DRAFT Resolution 2024-67, A Resolution Authorizing The City Administrator To Execute Department Of The Army Flood Proofing Participation Agreement Amendments And City Of Franklin Homeowner Funding Agreement Amendments For The Harpeth River Flood Risk Management Project (U.S. Army Corps Of Engineers Home Raising Program)

PURPOSE:

Consideration Of Resolution 2024-67, A Resolution Authorizing The City Administrator To Execute Department Of The Army Flood Proofing Participation Agreement Amendments And City Of Franklin Homeowner Funding Agreement Amendments For The Harpeth River Flood Risk Management Project (U.S. Army Corps Of Engineers Home Raising Program).

BACKGROUND/STAFF COMMENTS:

Resolution 2020-181, a resolution approving a Project Partnership Agreement (PPA), COF Contract No. 2020-0071, between the Department of the Army, represented by the United States Army Corps of Engineers (USACE), and the City of Franklin for the Harpeth River Flood Risk Management Project (Home Raising Program) was approved on October 27, 2020. This approval allowed the home raising program to move into the construction phase. As part of the PPA, the USACE requires a construction Flood Proofing Participation Agreement (FPPA) between the USACE, the City, and the homeowners. The FPPA officially brings the homeowners on to the home raising program, gives the specific program details and requirements of all 3 parties, and will need to be executed with each participating homeowner (35 eligible properties).

Also, in order to create the mechanism for the City to receive the homeowner's 17.5% contribution to the construction costs, a separate Homeowner Funding Agreement between the City and each participating homeowner (35 eligible properties) is required. This funding agreement states the homeowner must submit their full estimated 17.5% cost share to the City before construction can commence.

On April 13, 2021, the BOMA approved Resolution 2021-78, authorizing the City Administrator to execute all Home Raising Program related FPPAs and City Homeowner Funding Agreements with the USACE and eligible homeowners, in order to make the process of executing the possible 70

construction related agreements expeditious, thereby minimizing contract administration and construction delays.

Resolution 2024-67 will allow the City Administrator to execute required amendments to both the Flood Proofing Participation Agreements and Homeowner Funding Agreements. Reasoning for these amendments include approved construction time extensions, the potential for minor unforeseen or unanticipated cost overruns, and routine USACE administrative updates to the agreements. If this resolution is approved, the process of executing and amending the possible 70 construction related agreements will continue to be more efficient, thereby minimizing contract administration and construction delays.

FINANCIAL IMPACT:

All costs associated with this agreement are already built-in to the approved PPA. There are no anticipated cost increases at this time.

Funding for the city's portion of the project is allocated from the General Fund/Capital Bonding, as approved per Resolution 2024-46, Phase 1 of the FY 2024-2033 Capital Investment Program (CIP), and Resolution 2019-68 (the adopted FY 2019-2028 CIP).

RECOMMENDATION:

Staff recommends that Resolution 2024-67 be recommended to the Board of Mayor and Aldermen for approval.

RESOLUTION NO. 2024-67

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE DEPARTMENT OF THE ARMY FLOOD PROOFING PARTICIPATION AGREEMENT AMENDMENTS AND CITY OF FRANKLIN HOMEOWNER FUNDING AGREEMENT AMENDMENTS FOR THE HARPETH RIVER FLOOD RISK MANAGEMENT PROJECT (U.S. ARMY CORPS OF ENGINEERS HOME RAISING PROGRAM).

WHEREAS, the May 2010 flood event created devastation throughout the Harpeth River Watershed and caused 4 fatalities and over \$480 million in direct economic impacts in the Harpeth River Watershed alone. For this reason, the Department of the Army, represented by the United States Army Corps of Engineers (Corps), conducted a preliminary reconnaissance of the Harpeth River Watershed and found over 850 structures in the regulated floodplain within the basin located in the City of Brentwood, City of Franklin, Williamson County, and Davidson County; and

WHEREAS, on June 13, 2013, the Corps, City of Franklin, Metropolitan Nashville and Davidson County, City of Brentwood, and Williamson County signed an initial Feasibility Study Agreement to analyze alternative flood risk management options. The feasibility study evaluated numerous flood risk management options and provided an analysis of cost and benefits associated with various projects. The Corps determined that one project was considered economically justified, that being a home raising program; and

WHEREAS, on September 12, 2016, the City of Franklin entered in to a second agreement with the Corps to fully develop the flood risk management project/home raising program; and

WHEREAS, on July 10, 2018, the Board of Mayor and Aldermen approved Resolution 2018-53, "A Resolution Authorizing Staff to Proceed with the Home Raising Project Developed by the United States Army Corps of Engineers as part of the Harpeth River Feasibility Study"; and

WHEREAS, on April 23, 2019, the Board of Mayor and Aldermen approved Resolution 2019-53, agreeing to participate in the project as the Non-Federal Sponsor, with the source funding for the project being: the Corps agrees to pay for 65% of the construction, temporary relocation, and project administration costs, and the 35% of remaining Non-Federal Sponsor project costs are split 50/50 between the City of Franklin and eligible home raising property homeowner (65% Corps / 17.5% City of Franklin / 17.5% homeowner); and

WHEREAS, on October 27, 2020, the Board of Mayor and Alderman approved Resolution 2020-181, a resolution approving a Project Partnership Agreement (PPA), COF Contract No. 2020-0071, between the Corps and City of Franklin which outlined the cost share/contributions of both the Corps and City of Franklin for the home raising construction and project administration, thereby allowing the project to move in to the construction phase; and

WHEREAS, a required construction Flood Proofing Participation Agreement (FPPA) between the Corps, City of Franklin, and homeowners officially brings the homeowners on to the home raising program, gives the specific program details and requirements of all three parties, and will need to be executed with each participating homeowner (35 eligible properties); and

WHEREAS, in order to create the mechanism for the City of Franklin to receive the homeowner's 17.5% contribution to the construction costs, a separate Homeowner Funding Agreement (HFA) between the City of Franklin and each participating homeowner (35 eligible properties) is required and states the homeowner must submit their full estimated 17.5% cost share to the City of Franklin before construction can commence; and

WHEREAS, on April 13, 2021, the Board of Mayor and Aldermen approved Resolution 2021-78, authorizing the City Administrator to execute all Home Raising Program related Flood Proofing Participation Agreements and City of Franklin Homeowner Funding Agreements with the Corps and eligible homeowners, in order to make the process of executing the possible 70 construction related agreements expeditious, thereby minimizing contract administration and construction delays; and

WHEREAS, since Spring 2023, multiple FPPAs and HFAs have been executed with eligible homeowners, thereby beginning the home raising program's construction phase, with active home raising construction currently taking place; and,

WHEREAS, the FPPAs and HFAs state homeowners agree that unforeseen or unanticipated conditions encountered during performance of the work shall be immediately brought to the attention of the Corps and the City of Franklin for investigation, and subject to a determination that such conditions should not have been anticipated and were outside the control of either the homeowners or their contractor, the Corps and the City of Franklin may consent to an equitable supplementation and modification of the agreements for any costs of performance increased thereby; and,

WHEREAS, homeowner identified construction time delays and unforeseen or unanticipated construction cost overruns have been submitted to the Corps and City of Franklin and have been determined to be outside the control of either the homeowners or their contractor, and an equitable modification or supplementation to the FPPAs and HFAs are necessary to allow the flood proofing work to be fully completed; and,

WHEREAS, the Board of Mayor and Aldermen desire to make the process of executing any necessary agreement amendments expeditious, thereby minimizing contract administration and construction delays.

NOW THEREFORE, BE IT RESOLVED, BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, AS FOLLOWS:

SECTION 1. The City Administrator is authorized to execute all Home Raising Program related Flood Proofing Participation Agreement Amendments and City of Franklin Homeowner Funding Agreement Amendments with the Corps and eligible homeowners for construction time delays.

SECTION 2. The City Administrator is authorized to execute all Home Raising Program related Flood Proofing Participation Agreement Amendments and City of Franklin Homeowner Funding Agreement Amendments with the Corps and eligible homeowners for unforeseen or unanticipated construction cost overruns, up to ten percent (10%) above the original agreement cost totals.

SECTION 3. The City Administrator is authorized to execute all Home Raising Program related Flood Proofing Participation Agreement Amendments and City of Franklin Homeowner Funding

Agreement Amendments with the Corps and eligible homeowners for any administrative agreement changes required by the Corps.

IT IS SO RESOLVED AND DONE on this ____ day of _____ 2024

ATTEST:

CITY OF FRANKLIN, TENNESSE

By: _____
ERIC S. STUCKEY
City Administrator

By: _____
DR. KEN MOORE
Mayor

Approved as to Form

By: _____
J. Blake Harper, Staff Attorney



File #: 21-0435

DATE: July 3, 2024
TO: Capital Investment Committee
FROM: Paul Holzen, Director of Engineering
Jonathan Marston, Asst. Director of Engineering
David Hodnett, Staff Engineer

SUBJECT:

Consideration Of DRAFT COF Contract No. 2024-0156, With HDR Construction Control Corporation (HDR) For Construction Engineering And Inspection (CEI) On East McEwen Drive Phase 4 Improvements Project (PIN 125418.00)

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning COF Contract No. 2024-0156, a Professional Services Agreement (PSA) with HDR Construction Control Corporation (HDR) for Construction Engineering and Inspection (CEI) services for the East McEwen Drive Phase 4 Improvements project (TDOT PIN 125418.00 / COF Project No. 2015-002). Construction Engineering and Inspection (CEI) contract to reconstruct and widen East McEwen Drive from east of the Cool Springs Roundabout/Oxford Glen Drive to Wilson Pike (SR 252). HDR, the consultant, shall provide survey, engineering, construction engineering & inspection, and related technical services for the Project in accordance with the Scope of Services presented.

BACKGROUND/STAFF COMMENTS:

The City of Franklin is utilizing City funds, along with up to \$30.24M in Federal Surface Transportation Block Grant (STBG) funds, to reconstruct and widen East McEwen Drive, from east of the roundabout at Oxford Glen Drive / Cool Springs Boulevard to Wilson Pike (SR-252). The final project will be a median divided, 4-lane facility with left-turn lanes as needed. The project will include: curb & gutter, an ADA-compliant sidewalk, a multi-use path, and street lighting. Because this project involves federal funding, a very high level of inspection and documentation is required throughout the construction phase of the project. Due to these complex construction phase documentation requirements, a significant amount of both manpower and technical assistance is needed to fulfill the requirements.

This PSA with HDR, who was selected through an advertised, competitive solicitation process, is recommended by staff to provide the CEI services for the East McEwen Drive Phase 4 Improvements project, which will ultimately be awarded to a contractor via a low bid process. The technical service to be provided by HDR and its team include:

- General project oversight & administration,
- Coordination of weekly status meetings,
- Provide qualified staff to monitor & document work on-site,
- Conduct field surveys to verify quantities or check layout as needed,
- Material testing for quality assurance,
- Complete the required daily work diary,
- Review of Contractor payrolls for adherence to rules & regulations,
- Contractor and sub-contractor employee interviews,
- Document and ensure contract compliance,
- Compile final project records for the City,
- Utility coordination, and
- Erosion prevention and sediment control inspections.

Engineering Department staff, including the Project Manager and Capital Projects Construction Manager will continue to work closely with the HDR team. This allows our City staff to make critical project decisions as efficiently as possible. This also helps limit the number of senior staff needed by the consultant team, which helps keep project costs as low as possible.

FINANCIAL IMPACT:

HDR has proposed a cost-plus-fixed-fee with a not-to-exceed amount of \$4,371,709.04 to perform the services listed in scope for COF Contract No. 2024-0156.

RECOMMENDATION:

Staff recommends that COF Contract No. 2024-0156 be recommended to the Board of Mayor and Aldermen for approval.

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No. 2024-0156**

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

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

**East McEwen Drive Phase 4 Improvements CEI
FROM: 1750 FT. EAST OF COOL SPRINGS BLVD./OXFORD GLEN DR TO: S.R. 252 Wilson Pike**

1. SCOPE OF SERVICES. The Consultant shall provide survey, engineering, appraisal, construction engineering & inspection, and related technical services for the Project in accordance with the Scope of Services ("Services") as found in Attachment A, which shall be considered as an integral part hereof.
2. The Consultant shall submit as a part of Attachment A an individual Fee Schedule and a Completion Schedule for the Project based on the detailed Scope of Services.
3. In the event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.
4. The Consultant shall be paid on a monthly basis for work performed based on the Fee Schedule as contained in Attachment A in the Not to Exceed Amount of **Four Million Three Hundred Seventy-One Thousand Seven Hundred Nine and 04/100 Dollars (\$4,371,709.04)**.

The Board of Mayor and Aldermen Approved this Agreement on the _____ Day of _____ 20____.

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

ARTICLE 1. SERVICES. The Consultant will:

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

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

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

ARTICLE 3. GENERAL CONDITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 6. SCHEDULE.

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

ARTICLE 7. USE OF DOCUMENTS, DATA.

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

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

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

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

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

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

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

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

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

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

ARTICLE 8. INSURANCE.

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

ARTICLE 9. PAYMENT.

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

ARTICLE 10. MISCELLANEOUS PROVISIONS

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

ARTICLE 11. EXTENT OF AGREEMENT:

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

ARTICLE 12. DISPUTE RESOLUTION, BREACH.

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

ARTICLE 13. SURVIVAL.

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

THE CITY OF FRANKLIN, TENNESSEE:

HDR CONSTRUCTION CONTROL CORPORATION:

(Signature)

(Signature)

Name: Dr. Ken Moore

Name: Kyle R. Guthrie

Title: Mayor

Title: Vice President/Area Manager

Date: _____

Date: _____

Attest:

(Signature)

Eric S. Stuckey
City Administrator

Date: _____

Approved as to Form:

Shauna R. Billingsley, City Attorney

SCOPE OF WORK

SCOPE OF SERVICES SUMMARY

This document is to define as clearly as possible the duties of the consultant with regard to administration of the East McEwen Drive Phase 4 Improvements construction contract. The intent of the document is to give the Consultant the same responsibility and authority as City of Franklin (City) personnel when administering a locally managed construction contract. The administration of the construction contract will be conducted by the consultant in full cooperation with the City's Project Manager and/or their representative(s) assigned to the project. The City's Project Manager will have the final word in regard to challenges of consultant authority by the contractor or decisions made by the consultant regarding the work. The ultimate goal of the City and the Consultant should be to administer the contract in a highly professional manner, conducive of a cooperative relationship between the Consultant, contractors, and the City, and to complete the work on budget and on time with safety and minimum inconvenience to the public.

The responsibilities of the Consultant on this project may include:

1. Project Management Meetings/Updates for transition to Consultant

Management and Monitoring: Attend meetings and coordinate with the City of Franklin's Project Manager currently overseeing the project in order to transition project management and monitoring services. Meet with contractor to address consultant management roles and procedures.

2. Attend Weekly Meetings: Prepare the agenda, attend, and conduct a meeting every week with City personnel, the prime contractor, sub-contractors, utility personnel and other agencies affected by the project. Be prepared to discuss recent progress, upcoming events in the schedule, and problems associated with the project. Record significant information revealed and discussed at the meeting and distributes typed minutes to the appropriate agencies and attendees.

3. Project Administration: Provide project administration and coordinate with the assigned City Project Manager. Prepare for and attend, when requested, any periodic or in-depth inspections that may be conducted on the project related to project work, progress, or records. Prepare for, cooperate with, and assist auditors that may be assigned to review project records, payments, reports, etc. Provide ample inspectors and assistance to adequately oversee all work being done on the contract. Monitor Consultant hours worked on the project and justify need for overtime. Prior to starting work, submit to the City's Project Manager a listing of personnel assigned to the project for review and approval. In addition, a list of persons with emergency phone numbers should always be supplied to the City's Project Manager and be available at any time in the case of an emergency on the project. The project Administrator should also obtain from the contractor a list of contractor's personnel that will be responsible for any occurrence that may arise on the project for the life of the project.

4. Provide Construction Monitoring: Provide effective and qualified supervision of all monitoring services being conducted by the Consultant and sub-consultants.

Consultant's observation or monitoring portions of the work performed under construction contracts shall not relieve the Contractor from its responsibility for performing work in accordance with applicable contract documents. Consultant shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. Consultant shall not be responsible for the acts or omissions of the Contractor or other parties on the project.

The presence of Consultant's personnel at a construction site is for the purpose of providing the City of Franklin a greater degree of confidence that the construction work will conform generally to the construction documents and that the integrity of the design concept as reflected in the construction documents has been implemented and preserved by the construction contractor(s). Consultant neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents.

The Consultant will endeavor to provide field technicians (inspectors) certified in the applicable TDOT certification workshops listed below:

- OSHA 10 Safety Training Construction (All field personnel)
- TDOT:
 - Asphalt Roadway Paving Inspector
 - Class 1 Concrete Technician
 - Asphalt Plant Tech Certification
 - Soils and Aggregate Technician
- TDEC:
 - EPSC Level 1 – For inspectors conducting EPSC inspections
 - EPSC Level 2 – For supervisors of EPSC inspections
- Nuclear Gauge Training
- Work Zone Traffic Control and Flagger

Certification from another State Highway Department, nationally recognized institution, or other approved agency may be acceptable in lieu of the TDOT certification. Prior approval is required.

5. Conduct Field Surveys: Conduct and supervise surveying services to obtain original, final, as well as progress estimate quantities for payment of all earthwork pay items to the contractor. Be prepared to justify quantities in case of discrepancies by contractors or the

City of Franklin. Upon request, check construction layout when deemed necessary by the City's Project Manager.

- 6. Change Order, Force Account, and VECP:** Notify the City's Project Manager of the necessity of any change orders. Negotiate prices for additional pay items with the contractor while adhering to the "Average Unit Price" listing when possible. Coordinate acceptance of prices with the City's Project Manager. Prepare change orders on the supplied standard form and submit to the City's Project Manager for final review and submittal for processing. The Change Order will also be required to be entered and tracked in the project records. Any work that cannot be negotiated with the prime contractor will be pursued by force account as defined in the Standard Specifications and recorded on forms supplied by the City of Franklin or TDOT. Submit Value Engineering Change Proposals to the City's Project Manager for analysis and distribution to the appropriate division(s).
- 7. Shop Drawings:** See specification for road and bridge construction.
- 8. Quality Assurance, Testing for Acceptance, and Training:** *(The intent is for the Consultant to provide all field testing normally provided by the City of Franklin with employees certified to perform the tests. Copies of all certifications should be filed in the project records for review by the City at any time. Any temporary waivers of certification or licensing will be reviewed by the City for the final decision.)* Provide certification training to Consultant personnel for all necessary field testing and monitoring. Monitor the testing provided by the contractor in the field as defined in the Contract, Plans or Specifications. Document Consultant testing on standard forms provided by either the City of Franklin or HDR and distribute as required. Monitor documentation of testing by the contractor. Field testing by the Consultant includes, but is not limited to, all ACI tests for concrete including concrete plant for acceptance by the City, nuclear density testing of earthwork, base stone, asphalt, structural backfill, and pipe backfill as defined by the contract documents or the Tennessee Department of Transportation's Standard Specifications which includes the sampling and testing schedule defined in the Division of Materials and Tests SOP 1-1.

Also, included, as the responsibility of the consultant is miscellaneous checking of application rates and dimensions and bearings to verify conformance to Plans and Specifications, the Consultant will submit the initial information on forms supplied by either the City of Franklin or HDR and receive the final disposition of the material after review. Certifications of material submitted by the contractor will be reviewed by the Consultant for conformity to the Specifications. The certification documents submitted to the City of Franklin will also be reviewed for completeness and conformance to the City's standard form of submission. A Final Materials and Tests Certification will be submitted to the Materials and Tests Manager with the Final Records.

- 9. Progress Payments:** The Consultant will document and assemble accurate quantities for Monthly Progress Payments to the prime Contractor from actual project field records, as directed by the special provisions in the contract, from change orders or force accounts. The

quantities for payment will be referenced to field records prior to submission for payment. Test reports will be on file prior to payment. The City's Project Manager must approve any waiver of testing documents prior to payment. Pay quantities will be submitted to the City's Project Manager for review and payment. Payments for stockpiled material may be made as defined in the Standard Specifications and approved by the City's Project Manager.

Copies of approved subcontracts as well as copies of actual DBE subcontractor's contracts should be on file prior to the first Progress Payment.

10. Revisions to the Contract Plans: Any revisions to the contract plans or cross sections will be submitted to the City's Project Manager for processing.

11. Distribution of Correspondence: Submit to the City's Project Manager a copy of all correspondence between the Consultant, contractor, subcontractor, or others concerning matters related to the project. Maintain an office file copy for submission with the project Final Records.

12. Monitoring of Work: Provide construction monitoring services for conformance to Plans and Specifications for all roadway, structures, and specialty items that are being incorporated into the project. Observe, measure, and record all quantities for payment. Record field measurements in project records for review by the City of Franklin or auditors. The records will be recorded for review by the City of Franklin or auditors. Check traffic control daily, and additionally as required or requested. Notify the contractor of deficiencies or problems immediately. Document weekly (or as often as necessary) project traffic control on forms supplied by the City of Franklin or HDR and distribute as required. Monitor erosion control items daily for conformance to the plans as well as effectiveness in the field. Notify the contractor of deficiencies.

Prepare to justify any and all pay quantities in the case of questions by the contractor or Department.

Prepare an accurate daily diary, signed by the inspector consisting of:

- A record of the contractors on the project
- Their personnel (number and classification)
- Equipment (number and type or size)
- Location and work performed by each contractor or subcontractor
- Communications with the contractor
- Events of note on the project
- Accidents on the project and any details surrounding the accident such as police report numbers, fatalities, causes, time, etc. Obtain a copy of the police report for the project records whenever possible.
- Weather, amount of precipitation, temperature at morning, noon, and evening, cloudy, clear, etc.
- Days charged
- Equipment arriving or leaving the project, idle equipment

- Any other details that may be important later in the project life.

13. Contractor's Payrolls, Employee Interviews and Contract Compliance: Receive and check the contractor's payrolls for conformance to state wage rates as defined in the contract. Late payrolls (two weeks late) are justification to withhold progress payment. Notify the prime contractor of late payrolls and request immediate submission. Notify the City's Project Manager prior to withholding payments. Conduct employee interviews and compare to the submitted payrolls for accuracy. Notify the prime contractor of inaccuracies and resolve discrepancies. Adhere to Special Provisions concerning reports to be submitted to the Contract Compliance Office.

14. Reports: There are numerous reports, documents, etc. that must be generated in the process of contract administration. A copy will be provided by the City of Franklin prior to construction, or as needed. Any questions regarding the requirements can be forwarded to the City's Project Manager for clarification at any time.

15. Final Records: Submit a compilation of project records in the City of Franklin's standard format to the Final Records Department after project completion. Make corrections when/if notified and resubmit the records and a final estimate for the project at the appropriate time. Submit all final forms (FHWA-47, CC3, etc.) with the final records. Coordinate consultant hours after the project completion with the City's Project Manager for approval.

16. Project Claims: Prepare documentation and assist in the defense of the City, when requested, in preparation for Claims or possible Claims resulting in the execution of the contract.

17. Utility Relocations: Utility relocations are subject to be a part of this contract. Relocations that are reimbursable will be inspected for quantities that will be reviewed and verified comparing utility company records prior to payment by the City of Franklin.

18. Utility Coordination:

- **Coordinate with affected utilities to ensure timely utility relocation:**
 - Review utility relocation schedules and drawings.
 - Monitor utility relocation progress versus the schedule.
 - Meet with utility representatives to discuss the work progress and schedule changes.
 - Communicate frequently with the contractor and the City to provide updates on the progress and any problems. The vast majority of communications will be written in the form of emails and meeting minutes.
- **Conduct weekly utility meetings as needed on-site or off-site:**
 - a. Prepare the agenda, attend, and conduct utility meetings weekly or biweekly as requested as well as record significant information and distribute written minutes to the attendees. Meetings should include City

personnel, contractor, utility personnel and representatives of other agencies affected by the project. Discussion should include recent progress, upcoming events in the schedule, and project-related problems or roadblocks.

- **Prepare and distribute any necessary reports:**
 - a. Prepare and distribute meeting minutes which document discussions about proposed changes and their potential effects on time and money savings.
- **Verify that utilities are located in accordance with the plans:**
 - a. Compare utility relocation work versus the plans. Confirm the facilities are located in accordance with the plans and do not conflict with other work shown on the plans.
- **Coordinate with utilities and contractors to resolve conflicts:**
 - a. Meet with the utility, contractor, and City representatives to discuss any unexpected conflicts. Propose cost effective solutions to resolve conflicts that will minimize the schedule impact and cost to the project.
- **Assist the utilities, design firms, and City with issues involving supplemental agreements:**
 - a. Help streamline the process to keep construction moving along smoothly.
 - b. Follow up with the City, contractors, and utilities on paper work and drawing submittals where changes are required.

19. Erosion Control: This scope requires the provision of a qualified Erosion Prevention and Sediment Control (EPSC) Inspector with the capacity, upon request, to perform supplementary environmental engineering services associated with construction projects. The procedures contained within this scope follow the current National Pollution Discharge Elimination System (NPDES) Construction General Permit (CGP) and the TDOT Statewide Storm Water Management Plan (SSWMP) requirements.

The CONSULTANT shall be responsible for inspecting and reporting all EPSC activities and features within the project limits and affected areas during each site visit. All EPSC activities and features that occur between site visits shall be documented at the next site visit through inspection and/or information from the City's Project Manager. The activities outlined below will be performed throughout the life of the specified roadway contract. The CONSULTANT shall report directly to the City's Project Manager. All communications to the contractor will be through the City's Project Manager, unless otherwise specified by the City's Project Manager. See - Delegation of Authority. If the City's Project Manager specifies a designee, please provide the delegation of authority document, to the Contract Coordinator via email and posted in the project records. See - Signature Form.

- Submit a written summary of qualifications for each inspector associated with the specific project assigned. Each inspector will be stated at the submittal of the

estimate for services. No substitutions or additions to the original specified inspectors are allowed without written approval from the City's Project Manager. The request to substitute and/or add inspectors must be made in writing to the City's Project Manager, including no more than a one-page summary of qualifications. Written approval must be received from the City's Project Manager before these individuals are allowed to participate in the inspection services. If the inspector holds a Certified Professional in Erosion & Sediment Control (CPESC) certification, that certification must be specified.

- Copies of the project water quality permits, storm water coverage, the Storm Water Pollution Prevention Plan (SWPPP), and a half-size set of construction plans shall be made available to the CONSULTANT. The CONSULTANT shall obtain a copy of the contractor's permits and NOC for any off-site waste and/or borrow area for the City's Project Manager.
- Participate in project meetings relative to EPSC, including pre-construction meeting, if possible, on-site meetings with the City of Franklin, STATE and contractor, progress meetings, additional meetings required by the regulatory agencies and others as required. The City's Project Manager may request participation by the CONSULTANT, in biweekly, or similar, meetings conducted by the City's Project Manager to discuss progress, problems, (general, as well as specific), erosion control issues and their resolution.
- Make site visits to the construction site to:
 - a. Conduct a baseline evaluation, notes and pictures, at each outfall for
 - Documentation of the current conditions prior to road construction activities;
 - Inspection of changes related to siltation, in order to notify the City's Project Manager of conditions that might negatively impact or have potential for erosion problems (i.e. stability of the bank, sediment deposition, and source impacts) to waters of the State;
 - b. Review and verify the proper installation, maintenance and effectiveness of EPSC devices/measures per project plans and the SWPPP, or as directed by the City's Project Manager;
 - c. Review the completed installation of EPSC devices;
 - d. Review the effectiveness of EPSC devices;
 - e. Recommend needed repairs, maintenance and additions to EPSC system;
 - f. Provide review of the contractor's repairs, maintenance and additions to the EPSC system. It shall be the responsibility of the City's Project Manager to provide review of this work if reviews are required prior to the CONSULTANT'S routine inspection, except in emergency situations as deemed necessary by the City's Project Manager. However, this review shall be documented by the CONSULTANT at the next routine site visit;

- g. Review areas that have been seeded, mulched or otherwise stabilized for effectiveness and make recommendations for any deficient areas;
- h. Review stabilization efforts which are to be completed as required by the current NPDES CGP and/or TDOT SSWMP after final grading or earth moving activities have ceased;
- i. Review removal of vegetative ground cover occurring as required by the current NPDES CGP and/or TDOT SSWMP prior to grading or earth moving unless said area is seeded and/or mulched;
- j. Review requirement of construction phasing for acreage of disturbance soil as required by the current NPDES CGP, the project SWPPP and/or TDOT SSWMP. If there is a discrepancy, please contact the City's Project Manager for clarification.
- k. Perform oversight of contractor's off-site waste and borrow areas for the project, as specified in the TDOT SSWMP;
- l. Review compliance with the current NPDES Permit, TDOT SSWMP and any STATE (MS4) Municipal Separate Storm Water System NPDES permit requirements.
- m. The frequency of the site visits shall be as follows:
 - Baseline evaluation prior to start of construction activities at outfalls;
 - As required by the current NPDES CGP and TDOT SSWMP;
 - As required for Quality Assurance (QA) Team compliance visits. The CONSULTANT will work in conjunction with or act as a part of the QA Team.
- Review and make recommendations on the EPSC plans, possibly prepared by others, so that:
 - a. All EPSC measures are modified to be effective at all times throughout the course of the project;
 - b. The EPSC plan shows all boundaries of right-of-way and/or easements, as well as, the cut and fill slopes, and the watercourse and wetland boundaries contained within the ecology information provided by the TDOT Environmental Division (ED);
 - c. The timing of implementation regarding EPSC measures coincides with the construction of the road project;
 - d. Initial EPSC measures are in place before clearing, grubbing, excavation, grading, cutting or filling occurs;
 - e. EPSC measures for any relocation of utilities proposed are in place and provide protection for the project before clearing activities occurs if these activities are included as part of the roadway contract;

- f. Phasing is appropriate for the EPSC measures and devices and EPSC plans and notes address phasing issues required to construct the project;
 - g. Stage construction of the EPSC measures is shown on projects and the most effective staging methods are used;
 - h. All conditions in Section 4 above are met;
 - i. If anything changes on the EPSC plans as shown in the field SWPPP it is documented in the field SWPPP. All revisions to the field SWPPP shall be made by the CONSULTANT at each field visit;
 - j. Documentation of all maintenance and repair items necessary on EPSC measures and the corrective action taken for it are shown in the SWPPP. All revisions to the field SWPPP shall be made by the CONSULTANT at each field visit.
- Provide comments, suggestions, and correspondence to the City's Project Manager at each site visit. See – Circular Letter 209.01-02. The CONSULTANT shall follow-up site visit communications with the City's Project Manager with a standard written summary within 48 hours of the site visit inspection, including a photo journal of areas. The CONSULTANT shall request from the City's Project Manager a listing all other parties the CONSULTANT shall forward all appropriate information. In some cases, the City's Project Manager will request that the CONSULTANT clarify any comments directly to the contractor. If this is the case, the CONSULTANT shall provide this service in the presence of the City's Project Manager.
 - Maintain records, including documenting photographs (photo journal). See - Circular Letter 209.01-02.
 - Provide professional services related to the environmental engineering of roadway construction projects as requested by the City of Franklin.
 - Prepare and submit reports to the City's Project Manager, required by the NPDES CGP, the SWPPP, TDOT SSWMP, including:
 - a. Reports on deficiencies in the EPSC system and corrective actions undertaken. Information must be specific and recommendations for improvement must be made in the report. The report shall address specifically any items that are reoccurring from past reports;
 - b. TDOT Inspection reports See - Circular Letter 209.01-02;
 - c. Summary of all site visits, including photos (See - Circular Letter 209.01-02;);
 - d. Quarterly reports;
 - e. Other documentation required by SWPPP.

All documentation is to be placed on the STATE ftp site for viewing by others. A folder on this site will be set up for each of the CONSULTANT'S use. This folder must contain the name of the project including contract number for clarity. The file

information and password, if needed, shall be supplied to the City's Project Manager by email. All documentation shall be placed in a chronological series within these folders. Upon request, these reports shall be provided to the STATE construction office in paper form or via email.

Verbal reports shall be presented to the City's Project Manager at each site visit and written reports within 48 hours, so that the contractor can install the necessary recommendations before the next anticipated rainfall event. An email notification shall be sent to the construction office within 48 hours after the inspection for their use.

- Any time the CONSULTANT becomes aware that sedimentation is occurring or has occurred in streams impacted by the project, the CONSULTANT shall evaluate the EPSC measures employed, make recommendations to the City's Project Manager to repair or replace defective EPSC measures, and recommendations to install, as applicable, additional, or other EPSC measures with the goal of eliminating future sedimentation. If a consensus is not reached between the City's Project Manager, the contractor, and the CONSULTANT on appropriate recommendations within 24 hours, the CONSULTANT shall notify the Regional Environmental Coordinator for elevation procedure. If authority has been delegated on this project, the City's Project Manager shall be notified anytime a sediment release occurs.
- Acquire all appropriate signatures on EPSC inspection forms for these site visits when an inspection is completed. See - Signature Form. Appropriate signatures are required on all forms.
- The City of Franklin and/or the Contractor shall install rain gauges at all sites where clearing, grubbing, excavation, grading, cutting or filling is being actively performed, or exposed soil has not yet been permanently stabilized. On specific projects, rain gauges may need to be installed at every mile within the project limits per the Environmental Permits Office. The City's Project Manager may request the CONSULTANT check each gauge after every rainfall event occurring on these sites and maintain detailed records of rainfall events including dates, amounts of rainfall, and the approximate duration or starting and ending times. If the records are maintained by the City and/or the contractor, the CONSULTANT shall be responsible for reviewing these documents at each site visit.
- Prepare and submit any proposals for revision to the EPSC plan to the City's Project Manager for review and approval in time to allow review prior to implementation, except for recommendations for emergency repairs which will be submitted immediately.
- Maintain, within the SWPPP, a running index of revisions, dates, what occurred, and the page numbers of the EPSC sheets. The CONSULTANT shall make copies of this index for the City's Project Manager each time a change is made. All implemented revisions shall be marked by the CONSULTANT in red within the field SWPPP, initialed, and dated for revision as soon as the City's Project Manager, the contractor, and the CONSULTANT agree on changes as they are implemented in the field.

- If any revisions will interfere with any of the other water quality permits, the CONSULTANT shall contact the Manager of the Natural Resources Office within the ED for guidance before implementing.
- Be available, on call, to the City's Project Manager in the event of an EPSC emergency.
- Keep a chronological log in sheet anytime a site visit, inspection, and/or attendance at meetings occurs. See – Log Sheet. This log in sheet must include the name of the individuals representing the City or State on behalf of the CONSULTANT, the date and time of inspection, and be signed by the City's Project Manager. This log in sheet must be posted quarterly to the ftp site for inclusion in the STATE files.
- Comply with the evaluation process established by the City or State.
- Comply with any revisions to this scope proposed by the City or State.
- Comply with the cost proposal process established by the City or State.

The responsibilities of the City of Franklin on this project are:

1. **City Project Manager:** Provide a Project Manager to oversee and coordinate with CEI Supervisor.
2. **Public Information/Relations:** Manage public information/relations for project development.
3. **Offsite Fabrication Inspection:** Provide inspection services for all materials manufactured off site (i.e. bridge beams, concrete pipe, etc.).
4. **Geotechnical Services:** Provide all Geotechnical services needed to complete project.

Compensation

The Consultant will perform the scope of services defined above on a cost-plus-fixed-fee basis with a not-to-exceed amount of **\$4,371,709.04**, which includes a net fee amount for HDR CCC, the prime consultant, totaling **\$291,242.57**. The project will utilize Federal funding and the associated Consultant's FAR overhead rate. The consultant will not provide any services beyond the ceiling amount unless provided in writing as an amendment to this work order with appropriate modification to the ceiling amount and associated schedule.

HDR Construction Control Corporation

5/6/2024

CEI Cost Estimate

Project Description: East McEwen Drive Phase 4
PIN No.: 125418.00
Contract No.: TBD
County: Williamson

Fee % = 12.0%

Annual Escalation = 4.0%

		2024																
Classification	Firm	Hourly Rate	Hours / Week	Weeks	Total Hours	Direct Labor Amount	Overhead %	Overhead Amount	Fee %	Fee Amount (DL+OH Amount x Fee%)	Premium Hours	Premium Amount	Vehicle Rate	Vehicle Days	Vehicle Amount	Total Amount		
Project Principal	HDR Eng	\$ 92.96	0.5	34	17	\$ 1,580.32	157.24%	\$ 2,484.90	12.0%	\$ 487.83	-	\$ -	\$ 30.25	0	\$ -	\$ 4,553.05		
Project Accountant	HDR Eng	\$ 32.11	0.5	34	17	\$ 545.87	157.24%	\$ 858.33	12.0%	\$ 168.51	-	\$ -	\$ 30.25	0	\$ -	\$ 1,572.71		
PM / Resident Engineer	HDR CCC	\$ 86.23	16	34	544	\$ 46,909.12	123.59%	\$ 57,974.99	12.0%	\$ 12,586.10	-	\$ -	\$ 30.25	68	\$ 2,057.00	\$ 119,527.21		
Senior Inspector	HDR CCC	\$ 49.72	40	34	1,360	\$ 67,619.20	123.59%	\$ 83,570.57	12.0%	\$ 18,142.78	-	\$ -	\$ 30.25	170	\$ 5,142.50	\$ 174,475.05		
Inspector 1	HDR CCC	\$ 39.42	40	26	1,040	\$ 40,996.80	123.59%	\$ 50,667.95	12.0%	\$ 10,999.77	-	\$ -	\$ 30.25	130	\$ 3,932.50	\$ 106,597.02		
Inspector 2	HDR CCC	\$ 38.60	40	0	0	\$ -	123.59%	\$ -	12.0%	\$ -	-	\$ -	\$ 30.25	0	\$ -	\$ -		
Project Manager	CEC, Inc.	\$ 67.10	0.5	30	15	\$ 1,006.50	177.01%	\$ 1,781.61	12.0%	\$ 334.58	-	\$ -	\$ 30.25	0	\$ -	\$ 3,122.69		
Records/Inspector	CEC, Inc.	\$ 35.18	40	30	1,200	\$ 42,216.00	177.01%	\$ 74,726.55	12.0%	\$ 14,033.11	-	\$ -	\$ 30.25	150	\$ 4,537.50	\$ 135,513.16		
Construction Services Manager	Corradino	\$ 70.17	0.5	0	0	\$ -	150.17%	\$ -	12.0%	\$ -	-	\$ -	\$ 30.25	0	\$ -	\$ -		
Inspector	Corradino	\$ 40.43	40	0	0	\$ -	116.36%	\$ -	12.0%	\$ -	-	\$ -	\$ 30.25	0	\$ -	\$ -		

\$ 56,752.682024 Fee = \$ 545,360.89

		2025																
Classification	Firm	Hourly	Hours		Total	Direct Labor	Overhead		Overhead	Fee	Fee Amount	Premium	Premium	Vehicle	Vehicle		Vehicle	Total
		Rate	/ Week	Weeks	Hours	Amount	%		Amount	%	(DL+OH Amount x Fee%)	Hours	Amount	Rate	Days		Amount	Amount
Project Principal	HDR Eng	\$ 96.68	0.5	52	26	\$ 2,513.68	157.24%		\$ 3,952.52	12.0%	\$ 775.95	-	\$ -	\$ 30.25	0		\$ -	\$ 7,242.15
Project Accountant	HDR Eng	\$ 33.39	0.5	52	26	\$ 868.14	157.24%		\$ 1,365.07	12.0%	\$ 267.99	-	\$ -	\$ 30.25	0		\$ -	\$ 2,501.20
PM / Resident Engineer	HDR CCC	\$ 89.68	16	52	832	\$ 74,613.76	123.59%		\$ 92,215.15	12.0%	\$ 20,019.47	-	\$ -	\$ 30.25	104		\$ 3,146.00	\$ 189,994.38
Senior Inspector	HDR CCC	\$ 51.71	45	52	2,340	\$ 121,001.40	123.59%		\$ 149,545.64	12.0%	\$ 32,465.65	260	\$ 6,722.30	\$ 30.25	260		\$ 7,865.00	\$ 317,599.99
Inspector 1	HDR CCC	\$ 41.00	45	52	2,340	\$ 95,940.00	123.59%		\$ 118,572.25	12.0%	\$ 25,741.47	260	\$ 5,330.00	\$ 30.25	260		\$ 7,865.00	\$ 253,448.72
Inspector 2	HDR CCC	\$ 40.14	45	52	2,340	\$ 93,927.60	123.59%		\$ 116,085.13	12.0%	\$ 25,201.53	260	\$ 5,218.20	\$ 30.25	260		\$ 7,865.00	\$ 248,297.46
Project Manager	CEC, Inc.	\$ 69.78	0.5	52	26	\$ 1,814.28	177.01%		\$ 3,211.46	12.0%	\$ 603.09	-	\$ -	\$ 30.25	0		\$ -	\$ 5,628.83
Records/Inspector	CEC, Inc.	\$ 36.59	45	52	2,340	\$ 85,620.60	177.01%		\$ 151,557.03	12.0%	\$ 28,461.32	260	\$ 4,756.70	\$ 30.25	260		\$ 7,865.00	\$ 278,260.65
Construction Services Manager	Corradino	\$ 72.98	0.5	52	26	\$ 1,897.48	150.17%		\$ 2,849.45	12.0%	\$ 569.64	-	\$ -	\$ 30.25	0		\$ -	\$ 5,316.57
Inspector	Corradino	\$ 42.05	45	52	2,340	\$ 98,397.00	116.36%		\$ 114,494.75	12.0%	\$ 25,547.01	260	\$ 5,466.50	\$ 30.25	260		\$ 7,865.00	\$ 251,770.26

\$ 159,653.122025 Fee = \$ 1,560,060.21

		2026																
Classification	Firm	Hourly	Hours		Total	Direct Labor	Overhead		Overhead	Fee	Fee Amount	Premium	Premium	Vehicle	Vehicle		Vehicle	Total
		Rate	/ Week	Weeks	Hours	Amount	%		Amount	%	(DL+OH Amount x Fee%)	Hours	Amount	Rate	Days		Amount	Amount
Project Principal	HDR Eng	\$ 100.55	0.5	52	26	\$ 2,614.30	157.24%	\$	4,110.73	12.0%	\$ 807.01	-	\$ -	\$ 30.25	0	\$	-	\$ 7,532.04
Project Accountant	HDR Eng	\$ 34.73	0.5	52	26	\$ 902.98	157.24%	\$	1,419.85	12.0%	\$ 278.74	-	\$ -	\$ 30.25	0	\$	-	\$ 2,601.57
PM / Resident Engineer	HDR CCC	\$ 93.27	16	52	832	\$ 77,600.64	123.59%	\$	95,906.64	12.0%	\$ 20,820.88	-	\$ -	\$ 30.25	104	\$	3,146.00	\$ 197,474.16
Senior Inspector	HDR CCC	\$ 53.78	45	52	2,340	\$ 125,845.20	123.59%	\$	155,532.09	12.0%	\$ 33,765.28	260	\$ 6,991.40	\$ 30.25	260	\$	7,865.00	\$ 329,998.97
Inspector 1	HDR CCC	\$ 42.64	45	52	2,340	\$ 99,777.60	123.59%	\$	123,315.14	12.0%	\$ 26,771.13	260	\$ 5,543.20	\$ 30.25	260	\$	7,865.00	\$ 263,272.07
Inspector 2	HDR CCC	\$ 41.75	45	52	2,340	\$ 97,695.00	123.59%	\$	120,741.26	12.0%	\$ 26,212.36	260	\$ 5,427.50	\$ 30.25	260	\$	7,865.00	\$ 257,941.12
Project Manager	CEC, Inc.	\$ 72.57	0.5	52	26	\$ 1,886.82	177.01%	\$	3,339.87	12.0%	\$ 627.21	-	\$ -	\$ 30.25	0	\$	-	\$ 5,853.90
Records/Inspector	CEC, Inc.	\$ 38.05	45	52	2,340	\$ 89,037.00	177.01%	\$	157,604.40	12.0%	\$ 29,596.97	260	\$ 4,946.50	\$ 30.25	260	\$	7,865.00	\$ 289,049.87
Construction Services Manager	Corradino	\$ 75.90	0.5	52	26	\$ 1,973.40	150.17%	\$	2,963.46	12.0%	\$ 592.43	-	\$ -	\$ 30.25	0	\$	-	\$ 5,529.29
Inspector	Corradino	\$ 43.73	45	52	2,340	\$ 102,328.20	116.36%	\$	119,069.10	12.0%	\$ 26,567.68	260	\$ 5,684.90	\$ 30.25	260	\$	7,865.00	\$ 261,514.88

\$ 166,039.692026 Fee = \$ 1,620,767.87

Classification	Firm	Hourly Rate	Hours / Week	Weeks	Total Hours	Direct Labor Amount	Overhead %	Overhead Amount	Fee %	Fee Amount (DL+OH Amount x Fee%)	Premium Hours	Premium Amount	Vehicle Rate	Vehicle Days	Vehicle Amount	Total Amount
2027																
Classification	Firm	Hourly Rate	Hours / Week	Weeks	Total Hours	Direct Labor Amount	Overhead %	Overhead Amount	Fee %	Fee Amount (DL+OH Amount x	Premium Hours	Premium Amount	Vehicle Rate	Vehicle Days	Vehicle Amount	Total Amount
Project Principal	HDR	\$ 104.57	0.5	18	9	\$ 941.13	157.24%	\$ 1,479.84	12.0%	\$ 290.52	-	\$ -	\$ 30.25	0	\$ -	\$ 2,711.49
Project Accountant	HDR	\$ 36.12	0.5	18	9	\$ 325.08	157.24%	\$ 511.16	12.0%	\$ 100.35	-	\$ -	\$ 30.25	0	\$ -	\$ 936.59
PM / Resident Engineer	HDR CCC	\$ 97.00	16	18	288	\$ 27,936.00	123.59%	\$ 34,526.11	12.0%	\$ 7,495.46	-	\$ -	\$ 30.25	36	\$ 1,089.00	\$ 71,046.57
Senior Inspector	HDR CCC	\$ 55.93	45	18	810	\$ 45,303.30	123.59%	\$ 55,990.35	12.0%	\$ 12,155.24	90	\$ 2,516.85	\$ 30.25	90	\$ 2,722.50	\$ 118,688.24
Inspector 1	HDR CCC	\$ 44.35	45	12	540	\$ 23,949.00	123.59%	\$ 29,598.57	12.0%	\$ 6,425.71	60	\$ 1,330.50	\$ 30.25	60	\$ 1,815.00	\$ 63,118.78
Inspector 2	HDR CCC	\$ 43.42	45	12	540	\$ 23,446.80	123.59%	\$ 28,977.91	12.0%	\$ 6,290.97	60	\$ 1,302.60	\$ 30.25	60	\$ 1,815.00	\$ 61,833.28
Project Manager	CEC, Inc.	\$ 75.47	0.5	18	9	\$ 679.23	177.01%	\$ 1,202.31	12.0%	\$ 225.79	-	\$ -	\$ 30.25	0	\$ -	\$ 2,107.33
Records/Inspector	CEC, Inc.	\$ 39.57	40	18	720	\$ 28,490.40	177.01%	\$ 50,430.86	12.0%	\$ 9,470.56	-	\$ -	\$ 30.25	90	\$ 2,722.50	\$ 91,114.32
Construction Services Manager	Corradino	\$ 78.94	0.5	0	0	\$ -	150.17%	\$ -	12.0%	\$ -	-	\$ -	\$ 30.25	0	\$ -	\$ -
Inspector	Corradino	\$ 45.48	45	0	0	\$ -	116.36%	\$ -	12.0%	\$ -	-	\$ -	\$ 30.25	0	\$ -	\$ -

\$ 42,454.60

2027 Fee =

\$ 411,556.60

2027 Final Records																
Classification	Firm	Hourly Rate	Hours / Week	Weeks	Total Hours	Direct Labor Amount	Overhead %	Overhead Amount	Fee %	Fee Amount (DL+OH Amount x	Premium Hours	Premium Amount	Vehicle Rate	Vehicle Days	Vehicle Total Amount	Total Amount
Project Principal	HDR	\$ 104.57	0.5	12	6	\$ 627.42	157.24%	\$ 986.56	12.0%	\$ 193.68	-	\$ -	\$ 30.25	0	\$ -	\$ 1,807.66
Project Accountant	HDR	\$ 36.12	0.5	12	6	\$ 216.72	157.24%	\$ 340.78	12.0%	\$ 66.90	-	\$ -	\$ 30.25	0	\$ -	\$ 624.40
PM / Resident Engineer	HDR CCC	\$ 97.00	12	12	144	\$ 13,968.00	123.59%	\$ 17,263.06	12.0%	\$ 3,747.73	-	\$ -	\$ 30.25	24	\$ 726.00	\$ 35,704.79
Senior Inspector	HDR CCC	\$ 55.93	40	4	160	\$ 8,948.80	123.59%	\$ 11,059.83	12.0%	\$ 2,401.04	-	\$ -	\$ 30.25	20	\$ 605.00	\$ 23,014.67
Project Manager	CEC, Inc.	\$ 75.47	0.5	8	4	\$ 301.88	177.01%	\$ 534.36	12.0%	\$ 100.35	-	\$ -	\$ 30.25	0	\$ -	\$ 936.59
Records/Inspector	CEC, Inc.	\$ 39.57	24	8	192	\$ 7,597.44	177.01%	\$ 13,448.23	12.0%	\$ 2,525.49	-	\$ -	\$ 30.25	40	\$ 1,210.00	\$ 24,781.16

\$ 9,035.19

\$ 86,869.27

TTL Material Testing Services	(See separate attachment for details.)																\$57,199.00
CEC Surveying	(See CEC Surveying tab for details.)																\$89,895.20

Total Fee =

\$ 4,371,709.04



624 Grassmere Park, Ste. 14
Nashville, TN 37211
615.331.7770
www.TTLUSA.com

May 1, 2024

Mr. Jay Wood, PE
HDR, Inc.
120 Brentwood Commons Way
Brentwood, Tennessee 37027

**RE: Proposal for Laboratory Testing Services
East McEwen Drive – Phase 4 Improvements**
East McEwen Drive
Franklin, Tennessee 37067
TTL Proposal No. 24-08-00352.00 – REV1

Dear Mr. Wood:

Thank you for the opportunity to provide laboratory testing services during construction of Phase 4 of the East McEwen Drive Improvement project in Franklin, Tennessee. This proposal contains our understanding of the project, the proposed scope of services, and fee information.

PROJECT INFORMATION

TTL has been requested to provide laboratory testing services by HDR, Inc. Project information was obtained via email and telephone calls from Mr. Jay Wood, PE (HDR, Inc.). A link provided to us contained a set of “For Information Only; Not for Bidding Purposes” Drawings prepared by Sullivan Engineering, Inc., dated 05-01-2023.

PROPOSED SCOPE OF SERVICES

Based on conversations with Mr. Wood, we understand that our scope of services will be limited to laboratory testing services. Based on the information provided by HDR, Inc., we propose to provide the following services during construction:

Laboratory Testing:

- Perform various laboratory tests, as requested, in general accordance with TDOT’s Quality Assurance Program for the Sampling and Testing of Materials and Products (SOP 1-1), June 01, 2023, version. Generally, tests will include soil and stone Proctors, Atterberg limits, soil and stone gradations, various asphalt testing, and concrete cylinder curing and compressive strength testing.

COMPENSATION

Based on our understanding of the laboratory testing needs and the scope of work described within this proposal, we estimate the budget for our services to be about \$57,199. We will provide our services on a time and materials basis in accordance with the attached fee estimate.

AUTHORIZATION

To authorize our services, sign the attached Professional Project Services Agreement, and return it and the proposal to our office. This proposal will remain valid for a period of 60 days from the date of this letter.

CLOSING

We appreciate this opportunity to be of service to you on this project. If you have questions or require additional information, please contact our office at (615) 331-7770.

Sincerely,
TTL, Inc.



Daven Rogers
Project Manager



Martin L. Medley, II, PE
Vice President

Attachments: Construction Testing Estimate
Professional Services Agreement

Client: HDR, Inc.
 Project Name: East McEwen Drive - Phase 4 Improvements
 City, State: Franklin, TN
 TTL Proposal No.: 24-08-00352.00 - REV1

TTL
 624 Grassmere Park, Ste. 14
 Nashville, TN 37211
 615.331.7770
www.TTLUSA.com

SERVICE	PROJECTED SCHEDULE			UNIT COST	SUBTOTAL	SECTION SUBTOTAL
	Number	Units	Total	Rate	Subtotal	
LAB TESTING						
ASTM D2216 - Natural Moisture Content	36	1	36	\$11.00	\$396.00	
ASTM C136 - Sieve Analysis for Fine & Coarse Aggregates	48	1	48	\$110.00	\$5,280.00	
ASTM D698 - Standard Proctor Density (Soil)	10	1	10	\$145.00	\$1,450.00	
ASTM D4318 - Atterberg Limits	10	2	20	\$97.50	\$1,950.00	
ASTM D3549 - Unit Weight/Thickness (Asphalt Cores)	29	1	29	\$30.00	\$870.00	
ASTM D2173/ASTM D5444 - Asphalt Extraction w/ Gradation	42	1	42	\$250.00	\$10,500.00	
ASTM D2041 - Maximum Theoretical Density (Asphalt)	16	1	16	\$85.00	\$1,360.00	
ASTM D6927 - Marshall, Stability, & Flow (Asphalt)	16	1	16	\$100.00	\$1,600.00	
ASTM C39 - Concrete Test Cylinders (Made by Client)	59	4	236	\$27.50	\$6,490.00	
PM Data Entry and Review of Lab Results Data	266	0.5	133	\$180.00	\$23,940.00	
Engineer Review of Concrete Cylinder Data	59	0.25	14.75	\$228.00	\$3,363.00	
						\$57,199
DIRECT COSTS	Trips	Miles	Total	Rate	Subtotal	
						\$0
PROJECT ESTIMATE / BUDGET					\$57,199	

Note: This is a good faith estimate based on our understanding of the project. The actual schedule may vary and billing will be based on the unit rates shown on the attached fee schedule for actual hours worked.



AGREEMENT TO PROVIDE LAND SURVEYING SERVICES

This agreement dated on May 15, 2024 between Civil & Environmental Consultants, Inc. (CEC) and HDR Construction Control Corporation (CLIENT) is for the purpose of providing LAND SURVEYING SERVICES for CEC Project No. 335-399. Project will provide services for the East McEwen Drive Phase 4 Improvements located in Franklin, TN.

SCOPE OF SERVICES AS PER THIS AGREEMENT:

TASK 0001 (Construction Survey Services):

CEC will coordinate with HDR employees or other inspectors on the project to complete volume surveys, along with checking construction layout by others when requested. This agreement was put together based on plans titled “Department of Engineering Williamson County – East McEwen Drive Phase 4 Improvements”. The plans have a State Project Number of 94LPLM-F3-096 and a City of Franklin Project Number of 2015-0052. Plans provided are stamped “For information only; not for bidding purposes”. The project length listed on the plans is 1.372 miles.

CEC has made the following assumptions regarding this task:

- Horizontal and Vertical Control throughout the project will be provided to CEC along with final stamped copies of the construction plans and CAD files.
- CEC assumes that as clearing and grubbing is completed CEC will be contacted to conduct three to six different pre-construction surveys. These surveys will be completed to produce an existing conditions ground surface before grading activities begin in order to check against the existing contours provided in the plans and for future volume calculations. The existing ground surface will be obtained during this survey, but the existing site features and utilities will not be surveyed. CEC is estimating two to three field days for each of the survey events.
- CEC assumes that after the final grading is completed, for different sections of the project, CEC will be contacted to complete three to six different final subgrade surveys. These surveys will be completed to produce the final subgrade ground surface constructed. The final subgrade surface will be compared to the pre-construction ground surface for volume calculation checks of material moved. The final subgrade ground surface will be obtained during this survey, but the existing site features and utilities will not be surveyed. CEC is estimating two to three field days for each of the survey events.
- CEC has also budgeted for four independent field days of work to complete surveys on stockpiles for volumes as may be requested.

- With the three above tasks listed for volume surveys, CEC will process the survey data in Civil3D to verify and check the field survey information. Once that is completed, CEC will provide the Client the following for their use in calculating volumes:
 - ASCII points file with the survey points collected.
 - AutoCAD (*.dwg) file containing the survey line work produced along with contours at one-foot intervals.
 - A (*.xml) file containing the existing surface created from the field survey.
- It is assumed that with the pre-construction and final subgrade surveys that each survey event will be for a continuous section of the project.
- CEC has also budgeted for four field days to check construction layout by others if requested.

This task includes CAD file management, drawing preparation, calculations for construction layout checks, project office management, coordination of survey crews, and review of field work performed.

For this task, CEC will utilize survey field technicians equipped with survey grade GPS and Robotic Total Station survey instruments. At CEC's discretion, a small unmanned aerial system (sUAS), controlled by ground control aerial targets set and positioned by CEC, may be used for the pre-construction, final subgrade, and volume surveys.

ESTIMATED FEE:

Invoicing of professional services will be on a time and materials fee basis at raw labor cost plus current federal overhead of 177.01%, plus a fixed fee of 12% of labor and overhead in accordance with standard TDOT policy for an estimated fee of **\$89,895.20** as can be seen in the attached cost spreadsheet. If the estimated fee is anticipated to be surpassed, CEC will contact the Client to discuss a plan forward. Reimbursable expenses, including subcontracted services, will be invoiced at cost, plus a 10% administrative fee.

TERMS & CONDITIONS:

Our Schedule of Terms and Conditions, which apply to the proposed work, is attached. Any changes to our Terms and Conditions must be agreed to in writing by both parties prior to authorization to proceed. Your oral or written authorization to proceed will form a binding contract and indicates your acceptance of our Terms and Conditions.

Fee % = 12.00%
Annual Escalation = 4.00%

		2024																		
Classification	Firm	Hourly Rate	Hours / Week	Weeks	Total Hours	Direct Labor Amount	Overhead %	Overhead Amount	Fee %	Fee Amount (DL+OH Amount x Fee%)	Premium Hours	Premium Amount	Vehicle Rate	Vehicle Days	Vehicle Amount	Equipment Rate	Equipment Hours	Equipment Amount	Total Amount	
Party Chief	CEC, Inc.	\$ 38.00	14	4	56	\$ 2,128.00	177.01%	\$ 3,766.78	12.0%	\$ 707.38	-	\$ -	\$ 30.25	7	\$ 211.75	\$ 23.00	56	\$ 1,288.00	\$ 8,101.91	
CADD Technician	CEC, Inc.	\$ 43.00	4	6	24	\$ 1,032.00	177.01%	\$ 1,826.75	12.0%	\$ 343.05	-	\$ -	\$ 30.25	0	\$ -	\$ -	0	\$ -	\$ 3,201.80	
Surveyor	CEC, Inc.	\$71.50	3	6	18	\$ 1,287.00	177.01%	\$ 2,278.12	12.0%	\$ 427.82	-	\$ -	\$ 30.25	0	\$ -	\$ -	0	\$ -	\$ 3,992.94	
\$ 15,296.65																				

		2025																	
Classification	Firm	Hourly Rate	Hours / Week	Weeks	Total Hours	Direct Labor Amount	Overhead %	Overhead Amount	Fee %	Fee Amount (DL+OH Amount x Fee%)	Premium Hours	Premium Amount	Vehicle Rate	Vehicle Days	Vehicle Amount	Equipment Rate	Equipment Hours	Equipment Amount	Total Amount
Party Chief	CEC, Inc.	\$ 39.52	15	8	120	\$ 4,742.40	177.01%	\$ 8,394.53	12.0%	\$ 1,576.44	-	\$ -	\$ 30.25	15	\$ 453.75	\$ 23.00	120	\$ 2,760.00	\$ 17,927.12
CADD Technician	CEC, Inc.	\$ 44.72	8	10	80	\$ 3,577.60	177.01%	\$ 6,332.71	12.0%	\$ 1,189.24	-	\$ -	\$ 30.25	0	\$ -	\$ -	0	\$ -	\$ 11,099.55
Surveyor	CEC, Inc.	\$ 74.36	4	10	40	\$ 2,974.40	177.01%	\$ 5,264.99	12.0%	\$ 988.73	-	\$ -	\$ 30.25	0	\$ -	\$ -	0	\$ -	\$ 9,228.12
\$ 38,254.79																			

		2026																	
Classification	Firm	Hourly Rate	Hours / Week	Weeks	Total Hours	Direct Labor Amount	Overhead %	Overhead Amount	Fee %	Fee Amount (DL+OH Amount x Fee%)	Premium Hours	Premium Amount	Vehicle Rate	Vehicle Days	Vehicle Amount	Equipment Rate	Equipment Hours	Equipment Amount	Total Amount
Party Chief	CEC, Inc.	\$ 41.10	12	6	72	\$ 2,959.20	177.01%	\$ 5,238.08	12.0%	\$ 983.68	-	\$ -	\$ 30.25	9	\$ 272.25	\$ 23.00	72	\$ 1,656.00	\$ 11,109.21
CADD Technician	CEC, Inc.	\$ 46.51	6	9	54	\$ 2,511.54	177.01%	\$ 4,445.68	12.0%	\$ 834.87	-	\$ -	\$ 30.25	0	\$ -	\$ -	0	\$ -	\$ 7,792.09
Surveyor	CEC, Inc.	\$ 77.33	3	9	27	\$ 2,087.91	177.01%	\$ 3,695.81	12.0%	\$ 694.05	-	\$ -	\$ 30.25	0	\$ -	\$ -	0	\$ -	\$ 6,477.77
\$ 25,379.07																			

		2027																	
Classification	Firm	Hourly Rate	Hours / Week	Weeks	Total Hours	Direct Labor Amount	Overhead %	Overhead Amount	Fee %	Fee Amount (DL+OH Amount x Fee%)	Premium Hours	Premium Amount	Vehicle Rate	Vehicle Days	Vehicle Amount	Equipment Rate	Equipment Hours	Equipment Amount	Total Amount
Party Chief	CEC, Inc.	\$ 42.74	8	4	32	\$ 1,367.68	177.01%	\$ 2,420.94	12.0%	\$ 454.64	-	\$ -	\$ 30.25	4	\$ 121.00	\$ 23.00	48	\$ 1,104.00	\$ 5,468.26
CADD Technician	CEC, Inc.	\$ 48.37	4	5	20	\$ 967.40	177.01%	\$ 1,712.40	12.0%	\$ 321.58	-	\$ -	\$ 30.25	0	\$ -	\$ -	0	\$ -	\$ 3,001.38
Surveyor	CEC, Inc.	\$ 80.42	2	5	10	\$ 804.20	177.01%	\$ 1,423.52	12.0%	\$ 267.33	-	\$ -	\$ 30.25	0	\$ -	\$ -	0	\$ -	\$ 2,495.05
\$ 10,964.69																			

Total \$ 89,895.20

1. AGREEMENT

The following terms and conditions ("TERMS") shall apply to and are an integral part of the attached proposal ("PROPOSAL") between Civil & Environmental Consultants, Inc. ("CEC") and the client ("CLIENT") named in the attached PROPOSAL. CLIENT's acceptance of the PROPOSAL includes acceptance of these TERMS and acceptance of this PROPOSAL shall form the entire agreement between the parties ("AGREEMENT"). In the event of a conflict or inconsistency between these TERMS and the PROPOSAL, these TERMS shall take precedence. Acceptance of the AGREEMENT by CLIENT will occur when CLIENT directs CEC, orally or in writing, to commence performance of its services.

2. STANDARD OF CARE

CEC shall perform its services consistent with the professional skill and care ordinarily provided by professionals, such as CEC, practicing in the same or similar locality under the same or similar circumstances and in effect at the time of performance. CEC provides no warranties or guarantees whether express or implied.

3. SITE ACCESS, SITE CONDITIONS AND SUBSURFACE FEATURES

CLIENT will grant or obtain free access to the site for all equipment and personnel for CEC to perform the services set forth in this AGREEMENT. CEC will take reasonable precautions to limit damage to the site, but it is understood by CLIENT that, in the normal course of the services, some damage may occur and the correction of such damage is not part of this AGREEMENT unless so specified in the PROPOSAL.

The CLIENT is responsible for the accuracy of locations for all subsurface structures and utilities. CEC will take reasonable precautions to avoid known subsurface structures, and the CLIENT waives any claim against CEC, and agrees to defend, indemnify, and hold CEC harmless from any claim or liability for injury or loss, including costs of defense, arising from damage done to subsurface structures and utilities not identified or accurately located. In addition, CLIENT agrees to reimburse CEC for time and expenses incurred by CEC in defense of any such claim based upon CEC's current fee schedule and expense reimbursement policy.

CEC may, but is not required to, undertake an investigation to locate any utilities, structures or materials as CEC deems prudent. Such investigation by CEC shall not impose any additional obligation or liabilities on CEC and CLIENT agrees that such investigation, if undertaken, is for CEC's convenience only.

The CLIENT recognizes that subsurface conditions may vary from those observed at locations where borings, surveys, or explorations are made, and that site conditions may change with time. Data, interpretation, and recommendations by CEC will be based solely on information available to CEC. CEC is responsible for the data, interpretations, and recommendations based on its services, but will not be responsible for other parties' interpretations or use of the information developed.

4. BIOLOGICAL POLLUTANTS, HAZARDOUS MATERIALS AND HAZARDOUS CONDITIONS

CLIENT warrants that a reasonable effort to investigate and inform CEC of known or suspected Biological Pollutants, Hazardous Materials and hazardous conditions on or near the site has been made by the CLIENT. The term "Biological Pollutants" includes, but is not limited to, molds, fungi, spores, bacteria, and viruses, and the by-product of any such biological organisms. The term "Hazardous Materials" shall mean any toxic substances, chemicals, pollutants, or other materials, in whatever form or state, including but not limited to smoke, vapors, soot, fumes, acids, alkalis, minerals, toxic chemicals, liquids, gases or any other material, irritant, contaminant or pollutant, that is known or suspected to adversely affect the health and safety of humans or of animal or plant organisms, or which are known or suspected to impair the environment in any way whatsoever. Hazardous Materials shall also include, but not be limited to, those substances defined, designated, or listed in Section 404 of the Solid Waste Disposal Act (42 USC Subsection 6903); Section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act (42 USC Subsection 9601(14)); as listed or designated under Sections 1317 and 1321(b)(2)(a) of the Title 33 (33 USC Subsections 1317 and 1321(b)(2)(a)); or as defined, designated, or listed under any other federal, state, or local law, regulation or ordinance concerning hazardous wastes, toxic substances, or pollutants.

CEC and CLIENT agree that when unanticipated or suspected Biological Pollutants, Hazardous Materials and/or hazardous conditions are encountered it may be necessary for CEC to take immediate measures to protect health and safety. CEC agrees to immediately notify CLIENT when unanticipated or suspected Biological Pollutants, Hazardous Materials and/or hazardous conditions are encountered. CLIENT agrees to make any disclosures required by law to the appropriate governing agencies. In the event the site is not owned by CLIENT, CLIENT recognizes that it is the CLIENT's responsibility to inform the property owner of the discovery of unanticipated or suspected Biological Pollutants, Hazardous Materials and/or hazardous conditions.

Notwithstanding any other provision of the AGREEMENT, CLIENT waives any claim against CEC, and to the maximum extent permitted by law, agrees to defend, indemnify, and hold CEC harmless from any claim, liability, and/or defense costs for injury or loss arising from CEC's discovery of unanticipated or suspected Biological Pollutants, Hazardous Materials and/or hazardous conditions. CLIENT will be responsible for ultimate disposal of any samples secured by CEC which are found to be contaminated with Biological Pollutants and/or Hazardous Materials.

Nothing contained in this AGREEMENT shall be construed or interpreted as requiring CEC to assume liability for the generation, transportation, treatment, storage and/or disposal of hazardous waste within the meaning of the Resource Conservation and Recovery Act of 1976, as amended, or within the meaning of any similar federal, state, or local regulation or law.

If during remediation and/or construction activities waste manifests are required, CLIENT shall provide an authorized person to sign manifests or will provide CEC with a written limited power of attorney or agency agreement to sign manifests on CLIENT'S behalf.

5. EVOLVING TECHNOLOGIES

Services such as those provided by CEC may involve technologies which are new or emerging and these technologies may supersede current techniques. In addition, standards for our services, including statutes and regulations, may change with time. CLIENT understands that CEC's recommendations and/or services must be based upon the current Standard of Care utilizing established technologies and standards excluding new or emerging technologies unless agreed to by both parties in writing.

6. SAMPLE DISPOSAL

CEC will provide storage for samples collected for sixty (60) days. Further storage or transfer of samples can be made at CLIENT's expense and upon prior written request.

7. SAFETY/CONSTRUCTION OBSERVATION

CLIENT, its contractor or other representatives shall be solely responsible for working conditions on the site, including compliance with OSHA regulations and safety of all persons and property during the performance of the work. CEC will not be responsible for means, methods, techniques, sequences or procedures of construction including, but not limited to safety.

If CEC is retained by the CLIENT to provide a site representative for the purpose of observing specific portions of any construction work as set forth in the PROPOSAL, CEC will report observations and professional opinions. CEC's presence on the site does not in any way guarantee the completion or quality of the performance of the work by any party retained by the CLIENT to provide construction related services. CEC does not have the duty to reject or stop work of CLIENT or its agents unless contractually obligated.

8. BILLING AND PAYMENTS

8.1. General: Invoices will be submitted in accordance with the provisions outlined in the PROPOSAL. Payment is due from CLIENT thirty (30) days from the invoice date. If a retainer or pre-payment is required by the PROPOSAL, payment must be received by CEC prior to commencement of services. Payment shall be made as follows:

Electronic Payment:

PNC Bank, Pittsburgh, PA 15222
PNC Bank Routing #043000096
CEC Account #2272405
SWIFT & BIC Code: PNCCUS33
Remittance Detail: accountsreceivable@cecinc.com

Lockbox (regular mail):

Civil & Environmental Consultants, Inc.
P.O. Box 644246
Pittsburgh, PA 15264-4246

Any retainer shall be applied to the final invoice and unused funds, if any, returned to CLIENT. In the event CLIENT fails to pay CEC within thirty (30) days of invoice, CLIENT agrees that CEC will have the right to suspend performance of services after written notice to CLIENT. CEC will be entitled to interest of one and one half percent (1.5%) per month for past due amounts. CEC will be entitled to collect for time and expenses (per CEC's current fee schedules), attorneys' fees and other costs incurred by CEC for collection of past due amounts.

Our PROPOSAL does not include gross receipts taxes, business or occupation taxes or assessments that the municipality where the project is located may assess upon CEC or its subcontractors. If such taxes are or become a liability of CEC, the CLIENT agrees to reimburse CEC at cost.

8.2. Reimbursable Expenses: Direct non-salary expenses (e.g. Travel, Equipment, Subcontractors/Vendors) will be billed according to the terms of our PROPOSAL.

8.3. Litigation Services: If litigation services are not part of the PROPOSAL to which these TERMS are attached and are requested by CLIENT, the scope and fee schedule for the requested litigation services will be identified in a separate PROPOSAL. CLIENT shall reimburse CEC for costs incurred in responding to subpoenas or other legal requests related to the services provided by CEC under this AGREEMENT.

8.4. Design Build: If CLIENT requests CEC to perform design-build services, such services will be performed in accordance with separate TERMS and a PROPOSAL for such design-build services.

9. CHANGES

9.1. Changes: Upon a change in CEC's scope of services or discovery of unforeseen conditions, or any direction or instruction outside of the PROPOSAL, CEC will provide CLIENT with the estimated cost of performing the change and any change in the AGREEMENT schedule. Prior to CEC being required to implement the change, CLIENT shall authorize the requested change either verbally or in writing amending the AGREEMENT price and schedule.

9.2. Unauthorized Changes: If changes are made in CEC work products by CLIENT or persons other than CEC, any and all liability against CEC arising out of such changes is waived and CLIENT assumes full responsibility for such changes unless CLIENT has given us prior notice and has received written consent from CEC for such changes.

10. DELAYS

Delays not due to CEC shall result in an extension of the schedule equivalent to the length of delay. If such delays result in additional costs to CEC, the AGREEMENT price shall be equitably adjusted by the amount of such additional costs.

11. INSURANCE

CEC will maintain Workincn's Compensation Insurance as required by state law, General Liability Insurance for bodily injury and property damage with a limit of \$1,000,000 per occurrence and an aggregate limit of \$2,000,000 and Automobile Liability with a limit of \$1,000,000. Professional liability will be provided with a limit of \$1,000,000 per claim and \$1,000,000 in the aggregate, if applicable. CLIENT and/or the property owner will be listed as additional insured for General Liability Insurance upon CLIENT's written request.

12. ALLOCATION OF RISK

12.1. Limitation of Remedies: CLIENT agrees to limit CEC's liability for any claim arising from, or alleged to arise from any acts, errors or omissions in the performance of services under this AGREEMENT, whether such claim is based in negligence, breach of contract, or other legal theory to an aggregate limit of the amount of fees paid to CEC under this AGREEMENT, or \$50,000, whichever is greater, except for CEC's willful misconduct or gross negligence.

12.2. Waiver of Consequential Damages: CEC and CLIENT agree to waive any claim against each other for consequential, incidental, special or punitive damages.

12.3. Indemnification: CEC shall indemnify and hold harmless CLIENT from and against any and all claims, damages, or liability to the extent caused by the negligent performance of services under this AGREEMENT by CEC, including injuries to employees of CEC.

13. TERMINATION

This AGREEMENT may be terminated by either party seven (7) days after written notice: i) in the event of breach of any provision of this AGREEMENT; ii) if the CLIENT suspends the work for more than three (3) months in the aggregate; or iii) for CLIENT or CEC's convenience. In the event of termination for suspension or convenience, CEC will be paid for services performed prior to the date of termination plus reasonable termination and demobilization expenses, including, but not limited to the cost of completing analyses, records and reports necessary to document job status at the time of termination.

14. GOVERNING LAW

The law of the Commonwealth of Pennsylvania will govern the validity of these TERMS and the AGREEMENT, their interpretation and performance. If any of the provisions contained in these TERMS and the AGREEMENT are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired.

15. DISPUTE RESOLUTION

15.1. Notice of Dispute: Within fifteen (15) days of the occurrence of any incident, act, or omission upon which a claim for relief may be based, the party seeking relief shall serve the other party with a written notice specifying the nature of the relief sought, the amount of relief sought, a description of the reason relief should be granted, and the provisions of this AGREEMENT that authorize the relief requested.

15.2. Meet and Confer: Within ten (10) days of receipt of the Notice of Dispute, the parties shall meet and confer in a good faith attempt to resolve the dispute. Participants in the meet and confer must have the authority to enter into a binding resolution on behalf of each party.

15.3. Jurisdiction and Venue: After completion of the meet and confer, either party may proceed to litigation. CEC and CLIENT agree that any court of record in Allegheny County, Pennsylvania, shall have the exclusive jurisdiction and venue over any claims relating to or arising under this AGREEMENT.

15.4. Waiver of Jury Trial: THE PARTIES AGREE AND IRREVOCABLY WAIVE THEIR RIGHT TO TRIAL BY JURY IN ANY ACTION, DISPUTE, PROCEEDING OR SUIT RELATING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR THE PROJECT.

16. ASSIGNMENT

CLIENT and CEC each binds itself and its successors and assigns to the other and its successors and assigns with respect to all covenants of this AGREEMENT. Neither CLIENT nor CEC shall assign, sublet or transfer any rights under or interest in this AGREEMENT without the prior written consent of the other party. This section shall not, however, apply to subrogation rights (if any) of any insurer of either party.

17. OWNERSHIP

CEC shall have title to all drawings, specifications or other documents ("WORK PRODUCT") furnished to CLIENT and intended for use in connection with projects under this AGREEMENT. CLIENT is granted a limited license to use and reproduce the WORK PRODUCT prepared by CEC for use in the execution of the project(s) under this AGREEMENT. The WORK PRODUCT is not to be used by CLIENT or other contractors, subcontractors, or material suppliers on other projects without the express written consent of CEC.

18. FILE RETENTION

Upon conclusion of the project, CEC's file on the project will be closed and may be sent offsite for storage. Unless CLIENT requests a longer retention period in writing, CEC reserves the right to destroy all file information seven (7) years after the project is closed.

19. SURVIVAL

In the event of termination, cancellation or avoidance of this AGREEMENT, the terms and conditions of Articles 3 (Site Access, Site Conditions and Subsurface Features), 4 (Biological Pollutants, Hazardous Materials and Hazardous Conditions), 5 (Evolving Technologies), 11 (Insurance), 12 (Allocation of Risk), 14 (Governing Law), and 15 (Dispute Resolution) shall survive termination of the AGREEMENT.

END OF TERMS



File #: 21-0295

DATE: May 30, 2024
TO: Capital Investment Committee
FROM: Paul Holzen, Director of Engineering
Dustin Walcott, Staff Engineer

SUBJECT:

Consideration Of COF Contract No. 2024-0176, With Middle Tennessee Electric Membership Corporation For A Relocation Agreement For The Lewisburg Pike (SR-106 / US-431) Sidewalk Project At An Estimated Cost Of \$104,771.89

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning COF Contract No. 2024-0176 with Middle Tennessee Electric Membership Corporation (MTE) for the Lewisburg Pike Sidewalk (SR-106 / US-431) Project.

BACKGROUND/STAFF COMMENTS:

The Lewisburg Pike Sidewalk Project, from just south of East Fowlkes Street to Thompson Alley, is anticipated to be out for bid within the next few months. Construction could begin in early 2025, and last approximately 1 year. To accommodate the new sidewalks on both sides of the roadway, the existing overhead electrical and communication utilities must be relocated. This utility relocation agreement (COF Contract No. 2024-0176) with MTE allows for the design, construction, and relocation of these overhead electrical facilities, along with the acquisition of any replacement private easements that are being affected by the City's project.

Per the estimate provided by MTE, which can be seen as Exhibit B to the attached agreement, there are 20 utility poles that will be affected by the City's project. Of these 20 poles, which are owned by MTE, 15 (75%) are located in the existing public right-of-way (ROW) for Lewisburg Pike, and 5 (25%) are located in private ROW/easements. The utility is responsible for the cost of relocating facilities that were placed in the existing public ROW, while the City is responsible for the cost of the remaining relocation outside the existing public ROW. The City is also responsible for the cost of obtaining any new private ROW/easements for MTE that are affected by the project.

FINANCIAL IMPACT:

The total estimated cost of this MTEMC Relocation Agreement is \$104,771.89. However, this is just an estimate. With the approval of this relocation agreement (COF Contract No. 2024-0176), the City agrees to pay for the actual costs of relocating the electric facilities located in private right-of-

way/easements, which is 25% of the total relocation construction costs. The City also agrees to pay for 100% of the actual costs of any new private right-of-way/easements that need to be acquired, including any associated costs such as survey, appraisal, condemnation, etc.

RECOMMENDATION:

Staff recommends that COF Contract 2024-0176 be recommended to the Board of Mayor and Aldermen for approval.

MTEMC RELOCATION AGREEMENT
FOR CITY OF FRANKLIN: SR 6 Lewisburg Pike Sidewalk Project

Contract No.: 16236982

COF Contract No. 2024-0176

THIS AGREEMENT is made and entered into on this the 14th day of May 2024, by and between the City of Franklin, Tennessee ("City") and Middle Tennessee Electric Membership Corporation ("MTEMC").

WITNESSETH:

WHEREAS, the City plans to install sidewalks along Lewisburg Pike in Franklin, Tennessee (the "Project"), as shown on construction plans prepared by Middle Tennessee Electric Membership Corp. (attached hereto as Exhibit A); and

WHEREAS, the Electric Facilities must be relocated to accommodate the Project; and

WHEREAS, pursuant to the Project, 75% percent of the Electric Facilities is located on public highway right-of-way and 25% percent of which is located on private utility right-of-way.

WHEREAS, the relocation of Electric Facilities will be designed and constructed by MTEMC or MTEMC's contractor; and

WHEREAS, the City will approve final design plans to ensure the Electric Facilities are relocated in a manner to accommodate the Project.

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. The City shall be solely responsible for acquiring all MTEMC easements outside of the available public rights-of-way as may be needed to construct its Electric Facilities (the "Easement Acquisitions").
3. The City will pay for 100% of the costs of the Easement Acquisitions, which may include survey, appraisal, and condemnation costs, and any other cost related to the acquisition of necessary easements.
4. The City will reimburse MTEMC for all other costs related to the relocation of its facilities on private right-of-way, in an amount equal to 25% of the total construction costs, including but not limited to labor, materials, engineering, inspection, and betterment ("Construction Costs"). Costs reimbursed by the City pursuant to this Section 4 shall be

actual costs expended by MTEM C, regardless of whether such costs are more or less than the estimated cost as shown in Exhibit B – Estimated Total Construction Costs.

5. The City acknowledges and agrees that no construction will commence until: a.) the City has expressly approved MTEM C's relocation plans and all cost estimates associated therewith in writing, and any related amendments thereto; and b.) all Easement Acquisitions have been completed in MTEM C's sole discretion.
6. MTEM C shall have the responsibility to inspect all items of installation of MTEM C's new facilities to be performed by its Contractor to ensure that the installation of the new Electric Facilities is completed in accordance with this Agreement, the approved plans, MTEM C's technical specifications and all applicable specifications and safety codes.
7. This Agreement is subject to the appropriation and availability of City funds. In the event that the funds are not appropriated or are otherwise unavailable or the City cancels the Project for any reason, the City reserves the right to terminate this Agreement upon written notice to the MTEM C. Said termination shall not be deemed a breach of contract by the City. Upon such termination, the City will reimburse MTEM C for the actual cost(s), incurred through the date of termination, of the Easement Acquisitions and Construction Costs, whether incurred for public or private right-of-way, but only if MTEM C provides reasonable documentation for all such cost(s).
8. This Agreement may be modified by the parties only by a written amendment specifically citing the paragraph within this Agreement to be amended.
9. MTEM C shall comply with all applicable federal, state and local laws and regulations in the performance of its duties under this Agreement.
10. MTEM C may submit periodic invoices to the City during the course of the relocation, which invoices shall be payable within thirty (30) days after receipt of same by the City. Within one (1) year of completion of the relocation of Electric Facilities, MTEM C and the City shall settle on a final billing. MTEM C will provide reasonable documentation for all such costs.
11. Failure by any party to this Agreement to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term, covenant, condition or provision of this Agreement shall be held to be waived, modified, or deleted except by written amendment signed by the parties hereto.
12. MTEM C agrees to timely review the plans as provided by the City. MTEM C approvals of such plans will not be unreasonably withheld.
13. 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.
14. If any terms, covenants, conditions, or provisions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms, covenants, conditions and

provisions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.

15. The City and MTEMC agree that any notice provided for in this Agreement or concerning this Agreement shall be in writing and shall be made by personal delivery, by certified mail (return receipt requested), or by nationally recognized overnight delivery service (such as FedEx or UPS), addressed to the respective party at the appropriate address as set forth below or to such other party or address as may be hereafter specified by written notice.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF FRANKLIN, TENNESSEE

**MIDDLE TENNESSEE ELECTRIC
MEMBERSHIP CORPORATION**

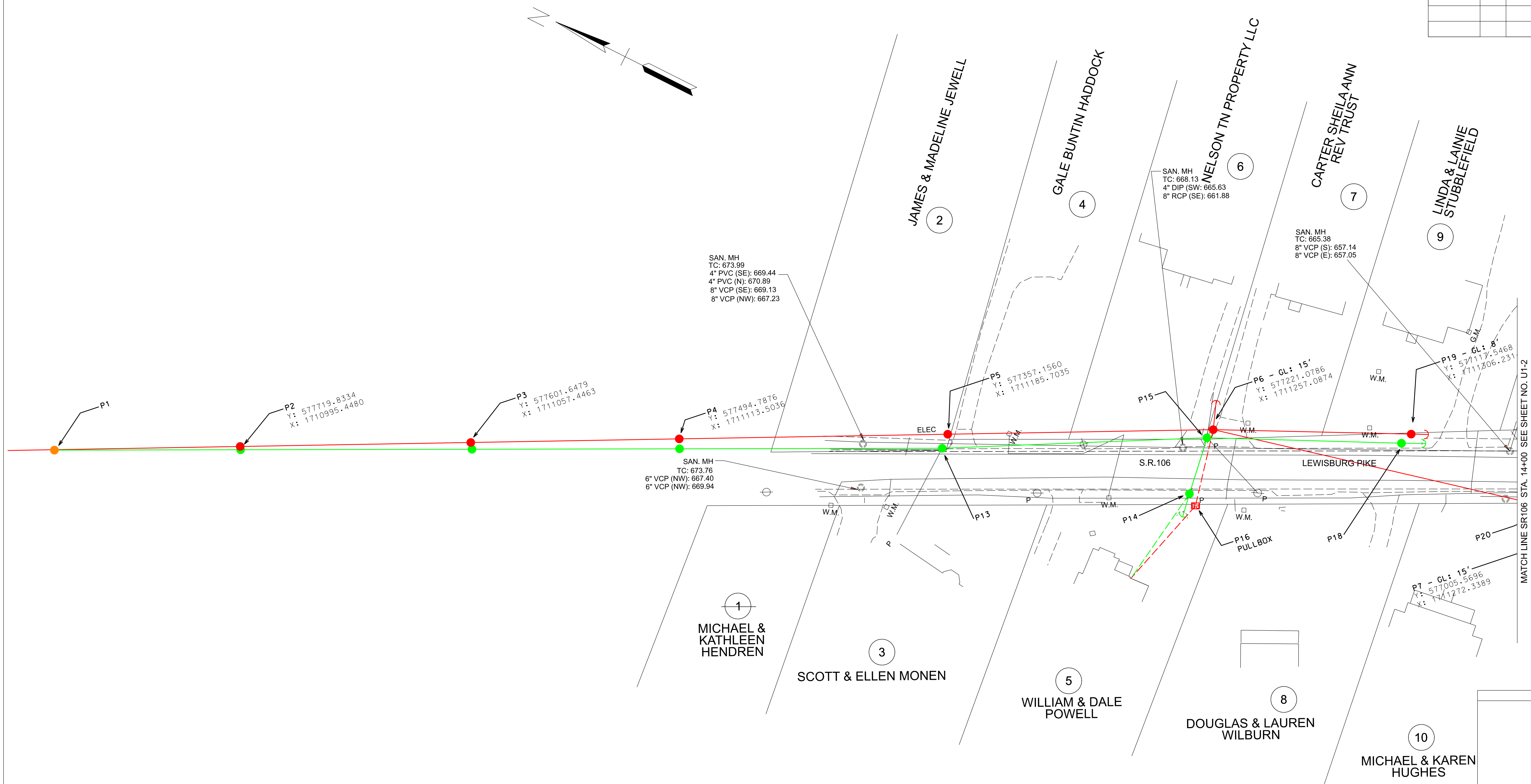
By: _____
Print: _____
Mayor
Date: _____

By: _____
Print: _____
Title: _____
Date: _____

Attest:

By: _____
Print: _____
Title: _____
Date: _____

TYPE	YEAR	PROJECT NO.	SHEET NO.
R.O.W.	2023	COF#2020-0009	U1-1



SEALED BY

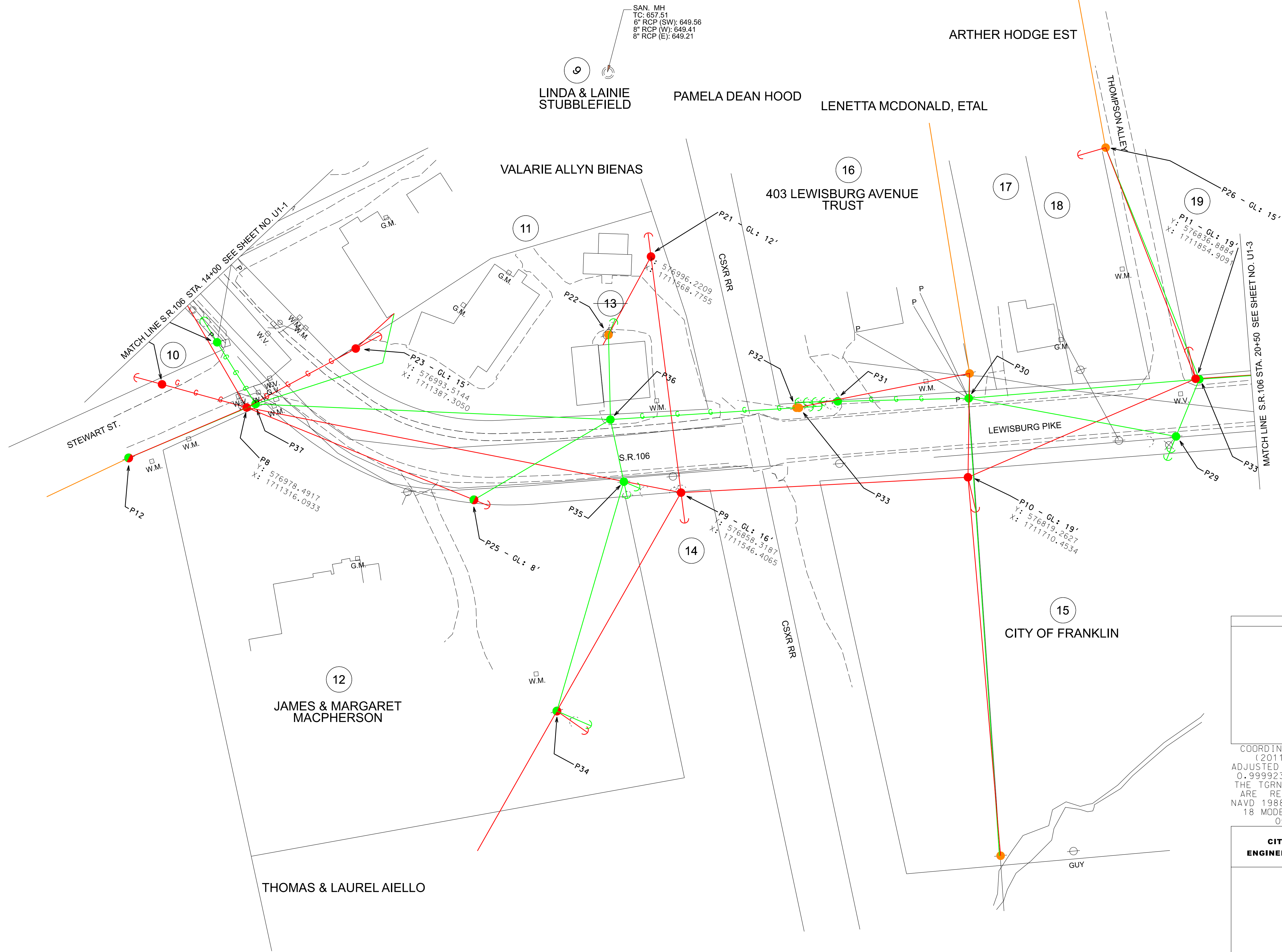
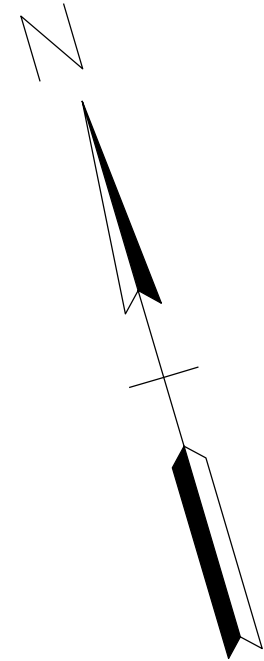
COORDINATES ARE NAD 83 (2011), ARE DATUM ADJUSTED BY THE FACTOR OF 0.99992346, AND TIED TO THE TGRN. ALL ELEVATIONS ARE REFERENCED TO THE NAVD 1988 USING THE GEOID 18 MODEL, OBTAINED ON 05/13/2020

CITY OF FRANKLIN
ENGINEERING DEPARTMENT

UTILITY
LAYOUT
S.R.106 STA.10+00 TO STA.14+00
SCALE: 1"=30'

\$\$\$\$SYTIME\$\$\$\$
\$\$\$\$DONSPEC\$\$\$\$

TYPE	YEAR	PROJECT NO.	SHEET NO.
R.O.W.	2023	COF#2020-0009	



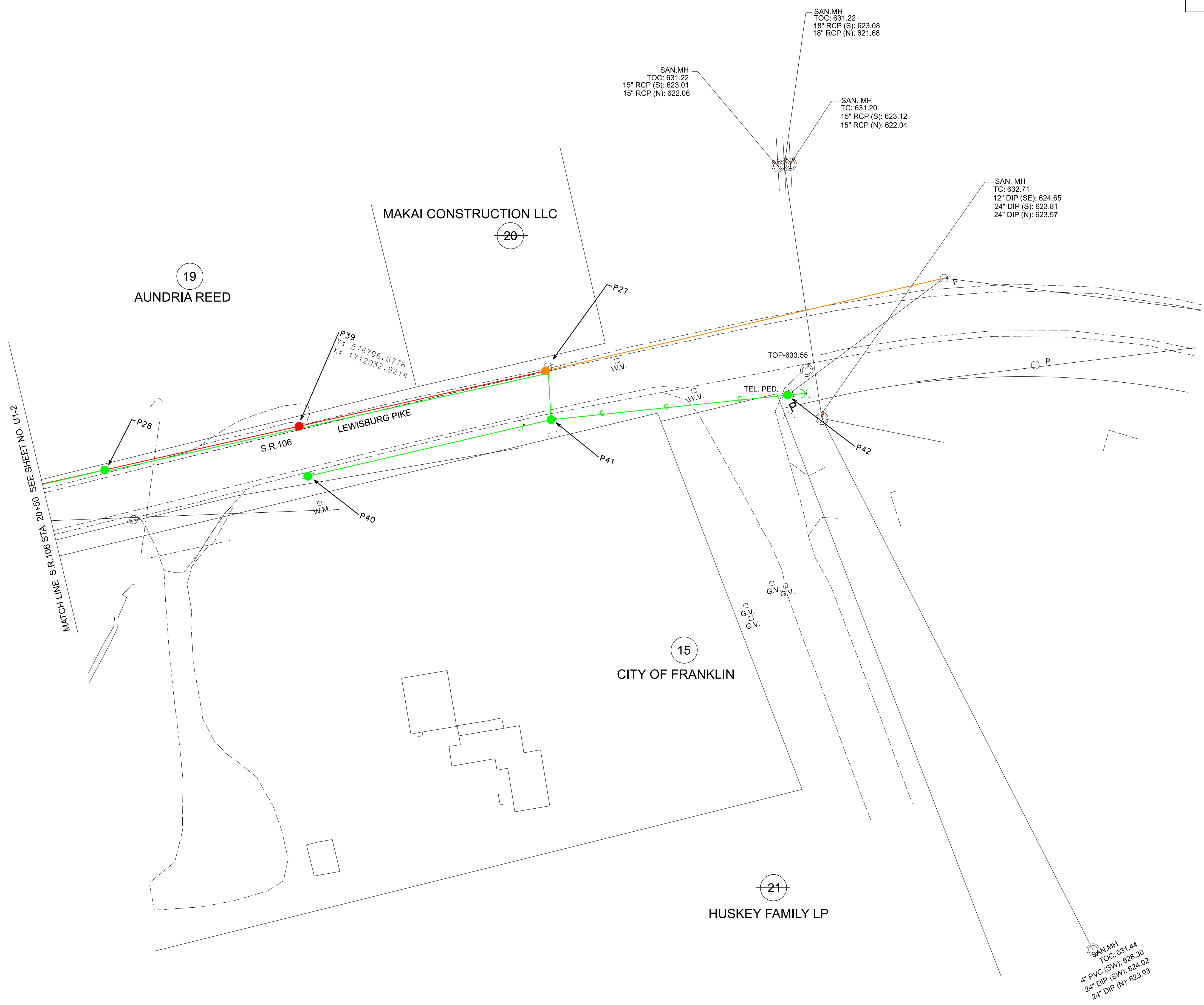
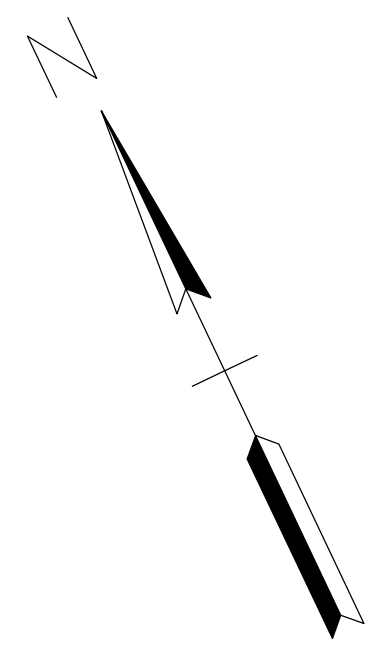
SEALED BY

COORDINATES ARE NAD 83 (2011), ARE DATUM ADJUSTED BY THE FACTOR OF 0.99992346, AND TIED TO THE TGRN. ALL ELEVATIONS ARE REFERENCED TO THE NAVD 1988 USING THE GEOID 18 MODEL, OBTAINED ON 05/13/2020

CITY OF FRANKLIN
ENGINEERING DEPARTMENT

\$\$\$\$SYTIME\$\$\$\$\$\$\$\$
\$\$\$\$DONSPEC\$\$\$\$\$\$\$\$

TYPE	YEAR	PROJECT NO.	SHEET NO.
R.O.W.	2023	COF#2020-0009	



\$\$\$\$SYTIME\$\$\$\$
\$\$\$\$DGNSPEC\$\$\$\$

SEALED BY

COORDINATES ARE NAD 83 (2011), ARE DATUM ADJUSTED BY THE FACTOR OF 0.99992346, AND TIED TO THE TGRN. ALL ELEVATIONS ARE REFERENCED TO THE NAVD 1988 USING THE GEOID 18 MODEL, OBTAINED ON 05/13/2020

CITY OF FRANKLIN
ENGINEERING DEPARTMENT

Exhibit B- Estimate Bill

Date: 5/10/2024

Project No.:

City of Franklin

County:

Williamson

Relocation of lines to clear construction:

SR-6 Lewisburg Pike Sidewalks

W.O. 16236982

Number of Poles on Private Right of Way	5
Number of Poles on Public Right of Way	15
Total	20
(A) 1. Engineering	\$ 9,100.00
2. Engineering Overhead	\$ 6,653.01
3. Crew Labor	\$ -
4. Contractor Labor	\$ 109,437.70
5. Transportation	\$ -
6. Right of Way (Tree Trimming)	\$ 50,000.00
7. Material	\$ 63,896.84
Total A	\$ 239,087.55
Less Betterment	
(B) 1. Less Material Used	\$ -
Less Betterment Labor	\$ -
Total B	\$ -
Grand Total A - B	\$ 239,087.55
25% of Total Engineering Cost due Middle Tennessee EMC	\$ 59,771.89
Estimated Easement Costs	\$ 45,000.00
Total Due Middle Tennessee EMC	\$ 104,771.89



File #: 21-0443

DATE: July 8, 2024
TO: Capital Investment Committee
FROM: Paul Holzen, Director of Engineering
Jimmy Wiseman, Asst. Director of Engineering

SUBJECT:

Consideration Of COF Contract No. 2024-0250, With Reck-Ritz Holdings LLC (The Caroline PUD Subdivision) For A Road Impact Fee Offset Agreement For An Amount Not To Exceed \$591,280

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning COF Contract No. 2024-0250.

BACKGROUND/STAFF COMMENTS:

The Caroline PUD Subdivision is required to make improvements along its frontage that qualify for road impact fee offset agreement. The total eligible costs of design, right-of-way acquisition, easement acquisition, permits, and construction of the roadway improvements are \$824,483. Initially, the developer submitted a reimbursement request totaling \$1,318,138. After careful review and verification of eligible expenses, it has been determined that the City will reimburse the developer a total of \$591,280, which does not exceed the arterial impact fees paid by the development.

FINANCIAL IMPACT:

The total eligible costs of design, right-of-way acquisition, easement acquisition, permits, and construction of the above arterial roadway Improvements is \$824,483 for the Development Project, and the total reimbursement to the Developer is estimated to be \$591,280. At no time shall reimbursement exceed the arterial impact fees collected as part of the Development Project.

RECOMMENDATION:

Staff recommends that COF Contract No. 2024-0250 be recommended to the Board of Mayor and Aldermen for approval.

**ROAD IMPACT FEE REIMBURSEMENT AGREEMENT
COF CONTRACT NO. 2024-0250**

This agreement ("Agreement") is entered into between THE CITY OF FRANKLIN, TENNESSEE ("City") and Reck-Ritz Holdings LLC, ("Developer"), on this the _____ day of _____, 20____, pursuant to Title 16, Chapter 4 of the Franklin Municipal Code ("FMC").

WHEREAS, the Developer has previously submitted to the Franklin Municipal Planning Commission The Caroline PUD Subdivision COF Project #8402 for approval (the "Development Project"); and

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

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

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

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

1. PURPOSE. The purpose of this Agreement is to define the obligations of the parties necessary to carry out the intent of this Agreement for the provision of reimbursement of collector and arterial road impact fees pursuant to the FMC.

2. TERM. This Agreement shall become effective on the date it is fully executed and shall continue until the parties have fully fulfilled their obligations provided hereunder or until the agreement is terminated as provided herein. Understanding the large financial investment each party is making, this Agreement shall only be terminated for convenience upon written agreement of the parties.

3. PROJECT. The Developer has submitted reliable information related to the costs of construction of the following Improvements:

- Closure of the full access median crossing at Cool Springs Blvd and the existing retail center south of CS Blvd. These improvements will remove the conflict of a full access median and improve the safety of this intersection.
- Increase to the stacking depths of the Westbound left-hand turn lane on Cool Springs Blvd onto Mack Hatcher Pkwy
- Increase to the stacking depths of the Westbound right-hand turn lane on Cool Springs Blvd onto Mack Hatcher Pkwy
- Improvements to the free-flow right-hand turn onto Mack Hatcher and improvements to the acceleration lane on Mack Hatcher Pkwy

4. ELIGIBLE ARTERIAL ROAD IMPACT FEE REIMBURSEMENT. The total eligible costs of design, right-of-way acquisition, easement acquisition, permits, and construction of the above arterial roadway Improvements is **Eight Hundred Twenty-Four Thousand Four Hundred Eighty-Three and No/100 Dollars**

(\$824,483.00) for the Development Project and the total reimbursement to the Developer is estimated to be **Five Hundred Ninety-One Thousand Two Hundred Eighty and No/100 Dollars (\$591,280.00)**. At no time shall reimbursement exceed the arterial impact fees collected as part of the Development Project

5. APPROVAL OF CONTRACTS AND AGREEMENTS. The City Engineer shall review and approve all professional services agreements, right-of-way and easement acquisition offers (that exceed the appraised value of the acquisition), and construction bids associated with the Improvements. The Developer shall obtain approval prior to the spending of any funding in which the Developer is seeking reimbursement from the City. The Developer agrees that failure to obtain contract approval from the City Engineer may result in loss of City reimbursement as determined by the City Engineer.

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

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

8. ON-SITE RIGHT-OF-WAY AND EASEMENT DEDICATION. The reimbursement value of on-site right-of-way shall be based on the fair market value of the land at the date of application for the development approval for which the condition of dedication was imposed. The value of right-of-way is hereby established as **\$40.34 per SF**, and all other necessary temporary slope, temporary construction, access easements, and utility easements shall be dedicated at no cost to the City.

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

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

10. Reimbursement and Final Acceptance.

- a. The Developer may submit periodic invoices to the City during the course of design, right-of-way acquisition, easement acquisition, permitting and construction (not more frequently than every 90 days), which invoices shall be payable within 30 days after approval by the Road Impact Fee Administrator (City Engineer), subject to collected impact fees as specified within this Agreement.
- b. No reimbursement on Construction shall be allowed until all right-of-way and easements have been properly deeded to the City and/or State and recorded at the Williamson County Register of Deeds.
- c. Invoices shall include copies of approved contracts and invoices associated with the roadway Improvements, partial lien waivers for all contracts and copies of checks to show proof of

payment. The Developer shall submit invoices based on the latest approved City forms as required by the Road Impact Fee Administrator (City Engineer).

- d. Prior to final reimbursement and City acceptance of off-site Improvements, the Developer shall coordinate final inspections with the City and obtain letters of acceptance from the Street Department or City Engineer.
- e. The following costs are specifically excluded from reimbursement: fiscal cost, including interest of money borrowed to finance the construction, cost for utility relocations, landscaping, turn lanes, internal management fees and turn lanes / signal improvements that benefit solely the development and not the arterial and/or collector roadway.

11. INDEMNIFICATION.

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

13. MISCELLANEOUS.

- a. Binding. This Agreement shall be binding upon the parties and shall take effect from and after its ratification and signing by all parties after obtaining appropriate approval pursuant to the requirements of applicable law.
- b. Severability. The parties agree that if any part, term, or provision of this Agreement is determined to be illegal or in conflict with any law of the State of Tennessee by any court with jurisdiction, the validity of the remaining portions or provisions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- c. Specific Performance. The parties recognize that the rights afforded to each under this Agreement are unique and, accordingly, the individual parties shall, in addition to such other remedies as may be available to them in equity, have the right to enforce their respective rights

hereunder by an action for injunctive relief and/or specific performance to the extent permitted by law.

- d. Cooperation. The parties agree to cooperate fully in order to successfully execute the terms and conditions of this Agreement, including obtaining all regulatory and governmental approvals required to carry out the terms of this Agreement, recognizing that the intent of each party to the other is to serve the individual interests of each party while respecting the conditions and obligations of this Agreement.
- e. Assignment. The rights and obligations of this Agreement are not assignable without prior written consent of the City.
- f. Law/Venue. This Agreement shall be exclusively governed by the laws of the State of Tennessee. In the event that any section and/or term of this Agreement, or any exhibits hereto, becomes subject to litigation, the venue for such action will be exclusively maintained in a court of competent jurisdiction sitting in Williamson County, Tennessee.
- g. Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to the subject matter hereof. This Agreement may be amended only by written instrument signed by all parties.

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

Approved by the Franklin Board of Mayor and Aldermen on _____, 20__.

WITNESS our hands on the dates as indicated.

DEVELOPER

RECK-RITZ HOLDINGS LLC

By: _____

Print Name: _____

Title: _____

STATE OF TENNESSEE)

)

COUNTY OF _____)

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

Witness my hand and seal on this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

CITY

CITY OF FRANKLIN, TENNESSEE, a municipality

By: _____

DR. KEN MOORE
Mayor

Date: _____

By: _____

ERIC S. STUCKEY
City Administrator

Date: _____

STATE OF TENNESSEE)
)
COUNTY OF WILLIAMSON)

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

Witness my hand and seal this ____ day of _____, 20____.

Notary Public
My Commission Expires:_____

Approved as to form by:

J. Blake Harper, Staff Attorney



File #: 21-0470

DATE: July 17, 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 July 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

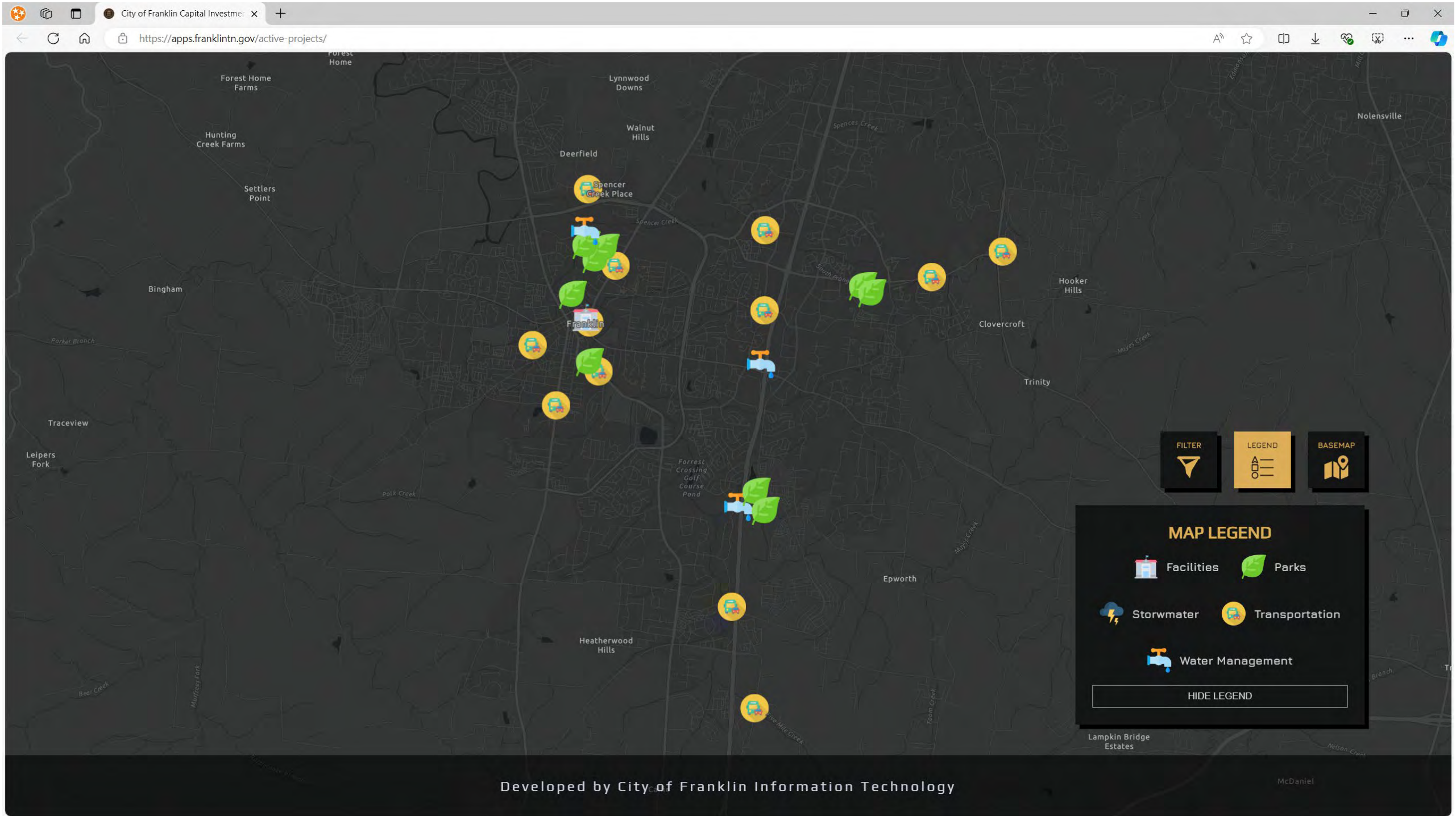


Image Captured from City of Franklin Website on 07/17/2024

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

OR

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