



HISTORIC
FRANKLIN
TENNESSEE

ITEM #30
BOMA 05/28/13

MEMORANDUM

Memorandum

TO: Board Of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator *Eric*

DATE: May 23, 2013

RE: Items approved by City Administrator
On behalf of the Board of Mayor and Aldermen

Through the authority granted by the Board of Mayor and Aldermen, the following items of action were approved by me on your behalf:

- A. On behalf of the board approval was given to enter a Professional Services Agreement with H & H Land Surveying, Inc. for the layout of the property corners and building envelope located at the future Westhaven site of the Franklin Fire Hall Station 8 located in the Westhaven community. Approximate cost for services \$ 700.00. (COF Contract # 2013-0069)
- B. On behalf of the board approval was given to enter a Professional Services Agreement with Patriot Engineering and Environmental, Inc. for Geotechnical Engineering Investigation at the site of the future Fire Hall Station 8 located in the Westhaven community. Approximate cost for services \$ 2,900.00. (COF Contract # 2013-0068)



HISTORIC
FRANKLIN
TENNESSEE

MEMORANDUM

May 15, 2013

To: Board of Mayor and Aldermen
Eric Stuckey, City Administrator

From: Brad Wilson, Facilities Project Manager

Subject:

The purpose of this memorandum is to provide information to the Board of Mayor and Aldermen (BOMA) that on behalf of the board approval was given to enter a Professional Services Agreement with Patriot Engineering and Environmental, Inc. for Geotechnical Engineering Investigation at the site of the future Fire Hall Station 8 located in the Westhaven community. Approximate cost for services \$ 2,900.00. (COF Contract # 2013-0068)

Background:

With the upcoming design of the prototypical fire hall facility that will be located at the Westhaven site and location of the facility on the property near a retention pond it bares that we perform some soil borings so that a proper structural design can be completed. The soil boring survey will provide needed information to the current status of subsurface materials and or fill within the building area. Even though the Firehall will be of a prototypical design the foundation system can and will always bear a difference do the subsoil materials on site. By doing the borings it will allow the architect and structural engineer to design a foundation system for the facility. A single report will be prepared to document the scope of work, methodology, and findings of the soil borings for the design aspect. The report will contain the lab report for the type of soils or fill materials within the site as well as a discussion to any potential environmental concerns.

Financial Impact:

The cost is based on a total of 6 (six) borings four (4) in the building envelope and two (2) in the pad or driveway area for a total of \$ 2,900.00.

Recommendations:

That the board agrees with the approval of the contract between the City of Franklin and Patriot Engineering so that the borings can occur prior to the commencement of the design work of the prototypical fire hall for the Westhaven community.

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No 2013-0068**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **PATRIOT ENGINEERING AND ENVIROMENTAL, INC.** hereinafter referenced as Consultant, who mutually agrees 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:

**Geotechnical Engineering Investigation to Property
Known As Lot #4300 Westhaven Development
Fronting On Front Street And Whitman Road**

1. **SCOPE OF SERVICES.** Consultant shall provide engineering and related technical services for the Project in accordance with the **SCOPE OF SERVICES**. The **SCOPE OF SERVICES** as found in **Attachment A** shall be considered as an integral part hereof.
2. Consultant shall be paid a **Fee Not to Exceed Two Thousand Nine Hundred and No/100 Dollars (\$2,900.00)** for the work as outlined in the **SCOPE OF SERVICES** (Attachment A).
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.

The City Administrator Approved this Agreement on the ____ day of _____ 2013 under the Authority Granted by the Franklin Board of Mayor and Aldermen by Resolution 2012-05.

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

BY: _____
Mr. Eric Stuckey
City Administrator
Date: _____

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

ARTICLE 1. SERVICES. Consultant will:

- 1.1 Act for City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry:
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by City at all reasonable times.

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

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

ARTICLE 3. GENERAL CONDITIONS.

- 3.1 Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the PROJECT acting upon written instruction issued by the Consultant.
- 3.3 Neither City nor Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party. However, nothing in this Article shall prevent Consultant from

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

3.4 ALLOCATION OF RISK AND LIABILITY; GENERAL. Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.2 **ENVIRONMENTAL RESPONSIBILITY.**

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

ARTICLE 6. SCHEDULE.

6.1 **TIME OF THE ESSENCE.** The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.

6.2 **FORCE MAJEURE.** Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.

6.3 Should City request changes in the scope, extent, or character of the Project, the 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 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 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 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 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**
The 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, 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 Consultant will take affirmative action to ensure that 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.** 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 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 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 City and Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by City and Consultant.

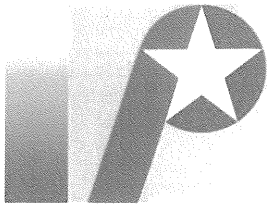
ARTICLE 12. DISPUTE RESOLUTION, BREACH.

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

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

ARTICLE 13. SURVIVAL.

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



**PATRIOT ENGINEERING
and Environmental, Inc.**

*Engineering Value for Project Success
Consulting Environmental, Geotechnical
and Materials Engineers*

May 14, 2013

City of Franklin
109 3rd Avenue South
Franklin, TN 37064

Attention: Mr. Brad Wilson

Re: Proposal for Geotechnical Engineering Investigation
Proposed Franklin Fire Station
Front Street and Whitman Road
Franklin, Tennessee
Patriot Proposal No. P13-Nash-GE-0008

Dear Brad:

Patriot Engineering and Environmental Co. (*Patriot*) appreciates the opportunity to submit this proposal to perform a Geotechnical Engineering Investigation for the above referenced project. This proposal has been prepared in accordance with your request for proposal sent to Monica Sartain on May 10, 2013.

Presented in this proposal is an outline of our understanding of the proposed project, our proposed work plan, estimated fee and schedule.

If you have any questions regarding this proposal or require any additional information, please do not hesitate to contact us.

Sincerely,
Patriot Engineering and Environmental, Inc.

Wesley J. Hemp, P.E., LEED AP
Director – Louisville Geotechnical Services

PROJECT DESCRIPTION and OBJECTIVE

The proposed project will include the design and construction of a new fire station in Franklin, Tennessee. It is our understanding that the proposed facility will be a two-story structure with 8,000 to 10,000 square feet of floor space and will have paved concrete driveways and parking lot. An existing pond borders the north side of the project area. The client has expressed some concerns regarding possible old fill that may have been placed on the site.

The objectives of this geotechnical engineering investigation will be to assess the subsurface conditions of the site and to provide recommendations for developing the site as proposed.

PROPOSED WORK PLAN

Patriot will drill a total of six (6) soil borings, with four (4) of the borings being advanced in the proposed building pad area to 20 feet or auger refusal, whichever comes first. The remaining two (2) borings will be advanced within the proposed pavement area to a maximum depth of 10 feet or auger refusal, whichever comes first. If auger refusal is encountered at an average of less than 10 feet, some rock coring (a maximum of 15 feet) may be performed to determine the nature and quality of the underlying bedrock.

Patriot will visit the project site prior to drilling to locate and mark the boring locations, after consulting with the client. If site conditions require that borings be relocated from previous agreed-upon locations, the client will be advised. *Patriot* will be responsible for "clearing utilities" within the public domain prior to the excavation of any subsurface exploration. ***The "clearing of utilities" outside of the public domain shall be the responsibility of the property owner or manager and coordinated with Patriot. If the underground utility lines at the boring locations cannot be marked by the owner, Patriot can use a private utility locator to clear our boring locations. If the location of the underground lines are not known, we strongly recommend using a private utility locator. If the Client wishes to use a private utility locator, a cost estimate for this task can be provided.***

The typical drilling method will utilize hollow-stem augers to advance the borings to the required depths. Split-spoon samples and Standard Penetration Tests values (commonly referred to as the blow-count or N-value) will be obtained in advance of the augers at 2.5 foot intervals to a depth of 10 feet, and 5-foot intervals thereafter per ASTM Method D-1586. Each boring will be monitored for the presence of ground water

during and immediately following the completion of the boring. For rock coring, a double-tube NX core barrel with a diamond cutting bit will be used to obtain the required core samples.

It is standard practice in drilling test borings to backfill with the auger cuttings. Sometimes the backfill will settle after the borings are completed, requiring a return trip to backfill again. An additional fee will be charged for this return trip. As an alternative, the holes can be backfilled with bentonite or grout to reduce settlements for an additional fee or the client may choose to maintain the borehole conditions after our departure.

After the fieldwork is completed, we will return all samples to *Patriot's* soils laboratory to perform the appropriate laboratory testing. The laboratory testing may include unconfined compressive strengths, natural moisture contents, grain size analyses, Atterberg Limits, and other testing as deemed necessary. All laboratory testing will be performed in accordance with applicable ASTM methods.

Based on the results of the fieldwork and laboratory testing, we will prepare a Geotechnical Engineering Report. The report will present all field data, test boring logs and laboratory test results. The geotechnical report will include recommendations for foundation type, bearing pressures, slab-on-grade and backfill, recommendations for subgrade preparation, subgrade parameters for pavement design, and other pertinent information necessary for the design and construction of the proposed facility. Three (3) hard copies and one (1) electronic copy of the report will be submitted.

The final report will include our estimate of the Seismic Site Classification in accordance with the 2006 International Building Code based on the subsurface conditions encountered in the test borings performed for this project. The Site Classification will be based upon our estimate of the average subsurface conditions to a depth of 100 feet, since the cost estimate that follows does not include drilling any of the test borings to 100 feet deep

ESTIMATED PROJECT COST

We expect to complete this work within an estimated budget of **\$2,900** based on the Scope of Work outlined in this proposal. Work performed outside the Scope of Work discussed in this proposal will be performed at a unit rate basis for the actual work performed. Such work will be considered a change in scope. The *Client* will be provided with a budget for this work modification for approval and authorization prior to proceeding with the work.

SCOPE OF WORK LIMITATIONS

In preparation of this proposal, we have assumed that a truck-mounted drill rig will be able access all of the boring locations. If “clearing” or “grading” of the site is required to gain access to the borings, an additional charge will be assessed.

If the borings reveal inconsistent and/or marginal soil conditions requiring additional borings or perhaps deepening the borings, the Client’s Project Manager will be consulted immediately with regard to the possibility of modifying the proposed subsurface investigation program. Such a modification may be considered a change in scope of the Proposed Work Plan, thereby requiring a possible adjustment to the budget of this Preliminary Geotechnical Engineering Investigation.

The subsurface investigation outlined in this proposal assumes that there are no hazardous materials in the soil or in the groundwater underlying the site. This investigation is not designed to detect or identify such materials. If it becomes apparent during the field investigation that hazardous materials are present, field operations will temporarily cease. The field investigation could be resumed only after the appropriate health and safety issues are addressed and the scope of our investigation modified to address this change in condition.

WORK SCHEDULE

Based on our present workload, we are preparing to begin marking boring locations and coordinate locating of underground utilities immediately upon receiving written authorization to proceed. The drilling will begin within one week of receiving written notice to proceed and should take one day (assuming no rock coring is performed). The final report will be completed within 2 to 3 weeks of drilling completion. Some verbal information can be provided shortly after the drilling has been completed.

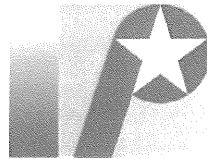
AUTHORIZATION TO PROCEED

As our formal authorization to proceed, please fill out and sign the Proposal Acceptance Agreement form included with this proposal, indicating proper billing instructions, and return an executed copy of this proposal for our files. Also, please note the Geotechnical Services Terms and Conditions included with this proposal, which is an integral part of this proposal. Alternatively, this work may be authorized by a written

purchase order or a letter instructing us to proceed, which provides for the Geotechnical Services Terms and Conditions herein.

ATTACHMENT A

Fee Schedule



**PATRIOT ENGINEERING
and Environmental, Inc.**

Engineering Value for Project Success

**PATRIOT ENGINEERING AND ENVIRONMENTAL, INC.
Geotechnical Engineering Services
2013 Fee Schedule**

	<u>Unit</u>	<u>Unit Cost</u>
<u>PROFESSIONAL SERVICES</u>		
Senior Principal Engineer, P.E.	Hour	\$182.00
Principal Engineer, P.E.	Hour	\$152.00
Senior Project Engineer, P.E.	Hour	\$134.00
Project Engineer, P.E.	Hour	\$108.00
Senior Engineer/Geologist	Hour	\$89.00
Geotechnical Engineer/Geologist	Hour	\$79.00
Draftsperson/CAD Technician	Hour	\$72.00
Senior Engineering Technician	Hour	\$54.00
Word Processor	Hour	\$60.00
<u>LABORATORY TESTING</u>		
Water Contents (oven dried)	Each	\$5.10
Hand Penetrometer Test	Each	\$9.75
Atterberg Limits (LL & PL)	Each	\$67.00
Grain Size Distribution	Each	\$113.00
Sieve Analysis only	Each	\$55.00
Minus #200 Sieve only	Each	\$37.00
Hydrometer only	Each	\$62.00
Natural Density	Each	\$28.50
Organic Content	Each	\$34.00
pH Determination	Each	\$29.00
Extrude & Log Shelby Tube Samples	Each	\$28.00
Standard Proctor	Each	\$139.00
Modified Proctor	Each	\$157.00
CBR Test	Each / Point	\$154.00
Unconfined Compressive Strength	Each	\$55.00
Test for pH, organic matter, soluble salts	Each	\$114.00
Triaxial Tests (CU - 3 circles)	Each	\$945.00
Consolidation Test	Each	\$430.00
Permeability Test (Cohesive Soils)	Each	\$310.00
<u>DRILLING SERVICES</u>		
Mobilization of drill rig and crew (Local)	Lump Sum	\$470.00
*plus \$4.30 per mile over 60 miles from a Patriot office		
Minimum Charge for drill rig, crew and equipment	Lump Sum	\$1,000.00
Drilling with 3.25" and 4.25" hollow stem augers with standard splitspoon sample intervals		
Under 50 feet depth and under 50 blows per foot	Foot	\$9.95
50 to 75 feet depth and under 50 blows per foot	Foot	\$11.50
Over 75 feet depth or over 50 blows per foot	Foot	\$14.50
Additional splitspoon samples beyond standard intervals	Each	\$13.85
ATV Drilling , Add	Foot	\$1.60
Mud Drilling, Add	Foot	\$5.90
Drilling without splitspoons	Foot	\$8.70
Bulk Samples (50 lb. bag)	Each	\$62.00
Rock Coring	Foot	\$33.00
Equipment, set-up for rock coring	Hole	\$62.00
Shelby Tube Samples (3 in. O.D.)	Each	\$52.00
Standby Time requested by Client or Hauling Water	Hour	\$164.00
Rental of Dozer (to assist drill rig under adverse site conditions)	Cost + 15%	
Asphalt or Concrete Plug of Drill Holes	Hole	\$32.00
Per Diem for Drill Crew per person	Per Day	\$113.00
Grouting Holes	Foot	\$8.30
Concrete Coring Through 6 to 8 inches of Floor Slab	Hole	\$257.00
Monitoring Well Installation	Foot	\$33.50
Monitoring Well Flush Manhole & Cover	Each	\$267.00
<u>GENERAL EXPENSES</u>		
Transportation by Company or Personal Car	Mile	\$0.68
Subcontractor Costs / Special Costs (i.e., film, FedEx, etc.)	Cost + 15%	
Additional Copies of Report (above 3 copies)*plus time	Page	\$0.46
Out-of-Town Living Expenses	Cost + 15%	

ATTACHMENT B

Geotechnical Services Terms and Conditions

Proposal Acceptance Agreement



PATRIOT ENGINEERING AND ENVIRONMENTAL, INC.

PHONE: 502-961-5652 FAX: 502-961-9256

PROPOSAL ACCEPTANCE AGREEMENT

Project Name: Proposed Franklin Fire Station

Project Location: Franklin, TN

Description of Services: Geotechnical Engineering Investigation

Patriot Proposal: P13-Nash-GE-0008 Patriot Project #:

APPROVAL & PAYMENT OF CHARGES - Invoices will be charged and mailed to the account of:

Firm: City of Franklin

Address: 1045 Lumbar Drive

City: Franklin State: Tennessee Zip: 37064

Attention: Mr. Brad Wilson

Telephone: (615) 557-7328 Fax: Email: brad.wilson@franklin.tn.gov

PAYMENT TERMS: Payable in accordance with the attached Terms & Conditions. Invoices for completed work will be issued every month for continuous or extended projects unless otherwise agreed.

REFERENCES - *Patriot* retains the right to perform a standard credit review on all new Clients. *Patriot* will proceed with the project immediately after formal credit approval and receipt of the required invoicing information.

Financial
(Current bank or other lender)

Supplier
(Current account with Client)

Trade
(Engineer, Contractor, Other, etc.)

Name:

Name:

Name:

Contact:

Contact:

Contact:

Account No.:

Account No.:

Account No.:

Phone No.:

Phone No.:

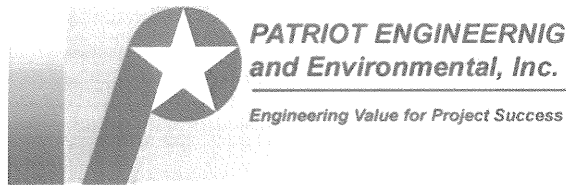
Phone No.:

NOTICE: *PATRIOT* reserves the right to withhold all reports until such time we receive a signed Proposal Acceptance Agreement or with other written authorization referencing this AGREEMENT in its entirety. This AGREEMENT together with *PATRIOT'S* Proposal, Unit Fee Schedule, and following Terms & Conditions constitute the entire agreement between the Client and *PATRIOT* and supersedes all prior written or oral understandings:

- Geotechnical Services Terms and Conditions
- Geotechnical/Phase 1 Environmental Site Assessments Terms and Conditions
- Geotechnical/CME Services Terms and Conditions
- Environmental/ Services Terms and Conditions
- Phase 1 Environmental Site Assessments Terms and Conditions
- Construction Materials Testing Services Terms and Conditions

PROPOSAL ACCEPTED BY: _____

TITLE: _____ DATE ACCEPTED: _____



TERMS AND CONDITIONS

1. SCOPE OF WORK

PATRIOT Engineering and Environmental Inc. (PATRIOT) shall perform the services defined in the attached proposal at the rates stated in the proposal or the attached fee schedule. Any estimate of time and materials shall not be considered as a fixed price, but only an estimate (unless otherwise specifically stated in this contract). PATRIOT will provide additional services at the listed standard rates. This offer will be valid for ninety (90) days unless otherwise stated. Upon acceptance, this proposal and associated terms and conditions shall become the contract.

2. RIGHT OF ENTRY

Client grants to PATRIOT the right of entry to the project site by its employees, agents, and subcontractors, to perform the service and represents that it has obtained the needed permits and licenses for the proposed work. If client does not own the site, Client warrants and represents to PATRIOT that it has the authority and permission of the owner and occupant of the site to grant right of entry to PATRIOT.

3. PAYMENT TERMS

PATRIOT will submit invoices to the Client throughout the project and a final invoice upon completion of services. There shall be no retainage of fees due and payable to PATRIOT payment is due within fourteen (14) days of invoice receipt, regardless of whether the client has been reimbursed by any other party. Client agrees to pay interest of one and one half percent (1½%) per month, or the maximum rate allowed by law, on past due accounts. Any attorney's fees, collection fees or other costs incurred in collecting any delinquent amount shall be paid by Client.

4. STANDARD OF CARE

The services shall be performed in accordance with generally accepted industry principles and practices, consistent with a level of care and skill ordinarily practiced by reputable members of the profession currently providing similar services under similar circumstances. Except as set forth herein, PATRIOT makes no other representation, guarantee, or warranty, express or implied, in fact or by law, whether any merchantability, fitness for any particular purpose or otherwise concerning any of the services which may be furnished by PATRIOT to Client. Client agrees to give PATRIOT written notice of any breach or default under this section and to give PATRIOT a reasonable opportunity to cure such breach or default, without the payment of additional fees to PATRIOT, as condition precedent to any claim for damages.

5. INSURANCE AND GENERAL LIABILITY

PATRIOT maintains Workers' Compensation and Employers' Liability Insurance in compliance with the laws of the state having jurisdiction over the individual employee. PATRIOT has insurance coverage under

general liability, property damage, and professional liability, which PATRIOT deems to be adequate. Certificates for such policies of insurance shall be provided to Client upon request. PATRIOT may provide additional insurance coverage beyond stated limits at the Client's request and expense.

6. RISK ALLOCATION

Due to the very limited benefit PATRIOT will derive from this project compared to that of other parties involved, including the Client, Client agrees to limit PATRIOT'S liability to Client or any other party using or relying on PATRIOT'S work with respect to any acts or omissions including, but not limited to, breach of this contract, breach of warranty, negligence, alleged defects in PATRIOT'S performance, or other legal theory such that the total aggregate liability of PATRIOT to all those named shall not exceed a maximum limit of \$25,000 or PATRIOT'S project fee for the services rendered on this project, whichever is less.

7. TERMINATION

Either party may suspend performance immediately upon becoming aware of a breach of the terms of this contract by the other party and provide notice of its intention to terminate. In the event PATRIOT determines there may be a significant risk that PATRIOT'S fees may not be paid on a timely basis, PATRIOT may suspend performance and/or retain any reports, work products, or other information until Client provides PATRIOT with adequate assurances of payment. The filing of a voluntary or involuntary bankruptcy petition, appointment of a receiver, assignment for the benefit of creditors or other similar act of insolvency shall constitute a breach. Termination will become effective seven (7) calendar days after receipt of notice by the breaching party unless the event(s) giving rise to the breach are remedied within the timeframe or the party seeking termination revokes its notice. Either party, without cause, may terminate this contract upon providing ten (10) calendar days written notice to the other party.

8. ASSIGNS

This contract may be amended by written instrument, e-mail confirmation, or written confirmation of a verbal agreement, acknowledged or signed by both parties. Client shall not assign this proposal or any reports or information generated as a result of contracted services pursuant to this proposal without written consent of PATRIOT.

9. SAFETY

PATRIOT'S responsibility for safety on site shall be limited to its own personnel, subcontractors, and any individuals who are directly involved with PATRIOT'S work on site. This shall not be construed to relieve the Client or any of its contractors from their responsibilities for maintaining a safe jobsite. Neither the professional activities of

PATRIOT, nor the presence of *PATRIOT'S* employees and its subcontractors shall be construed to imply that *PATRIOT* has any responsibility for any activities on the site, which are performed by personnel other than *PATRIOT'S* employees or subcontractors.

10. CONFLICTS

Should any element of the Terms and Conditions be deemed in conflict with any element of the proposal/contract, unless the proposal/contract clearly voids the conflicting element in the Terms and Conditions, wording of the Terms and Conditions shall govern. Any element of this agreement later held to violate a law or regulation shall be deemed void, but all remaining provisions shall continue in force. The Terms and Conditions set forth herein shall survive the termination of this contract. No action, legal or otherwise, may be brought against *PATRIOT* arising from its performance of services under this contract, whether for breach of contract, tort, or otherwise, unless *PATRIOT* shall have received within two (2) years after completion of services under this contract a written notice specifying the alleged defects in *PATRIOT'S* performance or other breach.

11. CONSEQUENTIAL DAMAGES

In no event shall either party be liable to the other party for any consequential, incidental, or indirect damages including, though not limited to, loss of income, loss of profits, loss or restriction of use of property, or any other business losses regardless as to whether such damages are caused by breach of contract or warranty, negligent acts or omissions, or other wrongful acts.

12. DELAYS IN WORK

PATRIOT will charge the Client at standard rates for stand-by or non-productive time for delays in *PATRIOT'S* work caused by the Client or Client's contractors unless otherwise specifically provided for in the contract.

13. SAMPLING OR TEST LOCATION(S)

Unless otherwise stated, the fees in this proposal do not include costs associated with surveying of the site for accurate horizontal and vertical locations of tests or samples which, when referenced in *PATRIOT'S* report, are based on information furnished by others and/or estimates made by *PATRIOT'S* personnel and are only considered approximations, unless otherwise stated. *PATRIOT* may deviate a reasonable distance from any test or sampling location as specified by the Client. If, in order to complete a given soil boring to its designated depth, relocating the soil sampling location and associated sampling method is necessitated by encountering impenetrable subsurface objects, all work, including the original work performed, will be charged for at the appropriate rates in the fee schedule.

Client recognizes that project site conditions may vary from those encountered at the locations where the borings, surveys, sampling, monitoring, or explorations are made by *PATRIOT* and its subcontractors, and that the data interpretations and recommendations of *PATRIOT'S*

and its subcontractors are based solely on the information available to them. *PATRIOT* will only be responsible for data, interpretations, and recommendations based on information obtained from the locations sampled, monitored, and explored by *PATRIOT* and its subcontractors, but shall not be responsible for the interpretations by others of the information obtained and reported.

14. DISPUTE RESOLUTION

Any claim or dispute made against *PATRIOT* for inadequate, negligent, or improper performance of services by *PATRIOT* pursuant to this contract must be resolved by negotiation or mediation. Any party to this contract may demand that any such disputes be resolved by negotiation or mediation, unless the parties mutually agree otherwise. The Client and *PATRIOT* further agree to include similar dispute resolution provisions in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include similar dispute resolution provisions in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for negotiation or mediation as the primary method for dispute resolution between the parties to those agreements.

15. FAILURE TO FOLLOW RECOMMENDATIONS

Client will not hold *PATRIOT* or its subcontractors liable for any consequential, incidental, or indirect damages or business losses that may occur based on, or which may result from *PATRIOT'S* or its subcontractors' recommendations that are not followed. Client waives any claim against *PATRIOT* and agrees to defend, indemnify, and hold *PATRIOT* harmless from any claim, liability for injury, or business loss that results from *PATRIOT'S* recommendations.

16. FORCE MAJEURE

Neither Client nor *PATRIOT* shall hold the other responsible for damages or delays in performance caused by events beyond the control of the other party and which could not reasonably have been anticipated or prevented, including but not limited to, acts of God, materially different site conditions, wars, riots, rebellions, sabotage, fires, explosions, accidents, floods, strikes or other conceded acts of workers, lockouts, or changes in laws, regulations, or ordinances. The party intending to invoke force majeure shall provide prompt notice to the other party.

17. RIGHT TO STOP OR DIRECT WORK

Since *PATRIOT'S* duties and services are limited to the scope of work proposed and contracted with the Client to perform, *PATRIOT* shall not under any circumstances give a stop-work order or direct work, either for quality, safety or any other reason, unless directed solely to *PATRIOT* personnel or its subcontractors' personnel. Neither shall *PATRIOT* be responsible for the possible consequences of not issuing a stop-work order. *PATRIOT* will only report to Client regarding the quality of the work *PATRIOT* has performed, or been contracted to observe and monitor.

18. FIELD MONITORING AND CONTROL

PATRIOT shall not, except for its own services and for services it subcontracts, specify project site procedures, manage or supervise project work, implement or be responsible for project site health and safety procedures. *PATRIOT* shall not be responsible for the acts or omissions of other parties on the project site and shall not have control or charge of and not be responsible, without limitation, for project means, methods, techniques, sequences, or procedures. *PATRIOT'S* project services shall not relieve any other parties from their responsibility for performing work in accordance with applicable plans, specifications, safety requirements, laws, and regulations. *PATRIOT'S* proposed and contracted monitoring and testing services are limited to its proposed and contracted scope of work and does not imply or warrant that *PATRIOT* is responsible for observing all activities and personnel at the project site. If *PATRIOT* is not retained to monitor environmental remediation, mitigation, or abatement activities, Client waives any claim against *PATRIOT* and agrees to indemnify, defend, and hold *PATRIOT* harmless for any claim or liability for injury or business loss resulting from remediation, mitigation, or abatement activities

The words "supervision", "inspection", or "control", if used in connection with *PATRIOT'S* work, are only intended to mean periodic observation or monitoring of the project work as outlined in *PATRIOT'S* proposed and contracted scope of work.

19. RETESTING AND RE-MONITORING

PATRIOT is only obligated to monitor and test in accordance with applicable and agreed upon standards and methods. In the event *PATRIOT'S* monitoring and/or testing discloses deficiencies in the project's work, and which consequently will require corrections, *PATRIOT* will retest or re-monitor the corrected work as required by the plans and specifications or as directed by the Client; however, all such retesting or re-monitoring shall be additional work and shall be paid for by Client at the agreed upon rates in this contract.

20. SITE WORK

PATRIOT will take reasonable precautions to avoid any damage to the project site from the activities of its personnel, subcontractors, or equipment. Any damage caused by *PATRIOT'S* negligence will be restored at *PATRIOT'S* expense; however, unavoidable damage caused in the execution of the project work such as tire rutting, cutting and splicing of fences, removal of potential asbestos containing materials (ACM), drilling through pavements, cutting of brush and trees, coring through pavements, etc., will not be restored unless otherwise stated in the contract.

21. UTILITIES

In the execution of any subsurface exploration, *PATRIOT* will take reasonable precautions to avoid damage to subterranean structures or utilities of which *PATRIOT* has received notification; however, it is the Client's

responsibility to mark or furnish the locations of all underground, manmade obstructions or utilities. Client shall indemnify, defend, and hold harmless *PATRIOT* from and against any claims, losses, or damages incurred or asserted against *PATRIOT* related to Client's failure to mark, protect, inform, or advise *PATRIOT* of underground structures or utilities, unless stated in our contracted scope of services.

22. SAMPLES

PATRIOT and its subcontractors will retain any soil, rock, water, or material samples obtained in the performance of its contracted scope of work for a period not to exceed thirty (30) days after submitting *PATRIOT'S* report or findings. Further storage or transfer of samples and materials obtained from the contracted scope of *PATRIOT'S* work can be made at the Client's expense upon written request.

23. ROOF CUTS

If roof cuts are authorized by the Client in *PATRIOT'S* contracted scope of work, it is the responsibility of Client to make the appropriate repairs to these roof cuts using materials consistent with the roofing system and in accordance with any existing material manufacturer's warranties. If a roofing contractor or maintenance personnel selected by Client is not on the roof to make repairs at the time the samples are obtained, *PATRIOT* may make temporary repairs at the time of sampling and inspection, which may result in additional charges. *PATRIOT* personnel are not certified in roofing repair and, under no circumstances, will be responsible for the adequacy and water tightness of the temporary repairs, nor shall *PATRIOT* be responsible for any water damage to the roofing system, building, or its contents resulting from *PATRIOT'S* temporary repairs.

24. AQUIFER CONTAMINATION

Client waives any claim against *PATRIOT*, and agrees to hold harmless, defend, and indemnify *PATRIOT* from any claim, business loss, or liability for injury as a result of cross-contamination caused by subsurface drilling and/or sampling unless due to *PATRIOT'S* negligence or willful acts.

25. HAZARDOUS SUBSTANCES

Client agrees to advise *PATRIOT*, prior to beginning project work, of any hazardous substances on or near the project site known to Client. In the event that test samples obtained during our work contain substances hazardous to health, safety, or the environment, these samples remain the property of Client which also shall pay for all costs connected with decontamination of *PATRIOT'S* or its subcontractors' equipment. Furthermore, any equipment of *PATRIOT'S* or its subcontractors' contaminated during *PATRIOT'S* services which cannot be reasonable decontaminated shall become the property and responsibility of Client. Such samples and/or equipment will be delivered to Client. Client agrees to pay transportation costs for samples and equipment, and the fair market value of such contaminated equipment. Client

waives any claim against PATRIOT and its subcontractors and agrees to defend, indemnify, and hold harmless PATRIOT from any claims, business loss, or liability for injury arising from PATRIOT'S failure to detect the presence of hazardous materials, including ACM, through techniques and methods agreed upon in the proposed and contracted scope of work, unless the failure to detect hazardous materials, including ACM, was due to PATRIOT'S failure to properly execute the proposed and contracted scope of work set forth in this contract.

26. ENVIRONMENTAL PROBLEMS

PATRIOT and its subcontractors' duties and responsibilities are limited to the proposed and contracted scope of work. Any sampling, testing, or monitoring of site conditions or materials related to environmental concerns including hazardous waste, soil, ground water, surface water, ACM, or air pollutants are not part of PATRIOT'S responsibilities and duties unless specifically identified in its proposed and contracted scope of work. If it becomes apparent during project site work that undisclosed hazardous materials may be present, project site work will be terminated unless specified in PATRIOT'S proposed and contracted scope of project work. Project site work will resume only after renegotiation of the contracted scope of services and fees to cover appropriate environment, health, and safety precautions. PATRIOT shall have no responsibility for detecting or dealing with environmental concerns, hazardous waste, soil, ground water, surface water, ACM, or air contamination, should they occur at the project site unless specifically outline in PATRIOT'S proposed and contracted scope of work. Client waives any claim against PATRIOT and agrees to defend, indemnify, and hold harmless PATRIOT from any claim, business loss, or liability for injury that results from the discovery of onsite environmental concerns, hazardous materials, soils, ground water, surface water, ACM, or air contamination.

27. ENVIRONMENTAL INDEMNITY

Client agrees to the maximum extent permitted by law to defend, indemnify, and hold harmless PATRIOT and its subcontractors from and against any and all claims and liabilities in connection with toxic or hazardous substances or constituents unless caused by PATRIOT'S negligence or willful acts, resulting from Client's violation of any federal, state or local statute, regulation or ordinance relating to the handling, storage or disposal of toxic or hazardous substances or constituents; Client's undertaking of or arranging for the handling, removal, treatment, storage, transportation or disposal of toxic or hazardous substances or constituents found or identified at the site; toxic or hazardous substances or constituents introduced at the site by Client or third persons before or after completion of services herein; allegations that PATRIOT or its subcontractors are the handlers generators, operators, treaters or storers, transporters, or disposers under the Resource Conservation and Recovery Act of 1976, Comprehensive Environmental Response, Compensation and Liability Act, or any other similar federal, state or local regulation or law.

PATRIOT or its subcontractors have no role in generating, treating, storing, or disposing of any hazardous materials which may be present at the project site, and which at no time become the property of PATRIOT or its subcontractors, unless specifically identified in the proposed and contracted scope of work. Client shall evaluate and select proper disposal site for treatment or disposal of its hazardous materials (to include test samples collected to determine the characteristics of the samples), shall select the method of transportation, and shall be solely responsible therefore. Any arrangements for the treatment, storage, transport, or disposal of any hazardous materials that are made at the direction and expense of Client and to be conducted or completed by PATRIOT shall be construed as being made solely and exclusively on Client's behalf for Client's benefit, and Client shall defend, indemnify, and hold harmless PATRIOT from and against any and all claims, damages, business losses, liability of injury, and expenses, including reasonable attorney's fees, which arise out of any release, threatened release, transportation, or disposal of hazardous materials, unless caused by the negligence or willful acts of PATRIOT during the execution of its proposed and contracted scope of work.

28. OWNERSHIP OF DOCUMENTS

Client agrees that all original documents and drawings produced by PATRIOT in accordance with this agreement, except documents, which are require to be filed with public agencies, shall remain the property of PATRIOT. Client agrees to be liable and responsible for the use of unsigned plans, drawings, or other documents not signed by PATRIOT, and waives liability against PATRIOT for their use. Further, client agrees to waive any claim against PATRIOT and to indemnify, defend, and hold harmless PATRIOT from any and all claims arising out of any use, not authorized in writing by PATRIOT, of these documents by third parties not related to this agreement.

29. PUBLIC RESPONSIBILITY

Client shall be responsible for reporting to appropriate governmental and licensing agencies with respect to any legal or regulatory requirements, code violations, or hazardous substances detected on site. If Client disregards PATRIOT'S and its subcontractors' recommendations for reporting or public health and safety, Client waives any claim against PATRIOT and its subcontracts and agrees to defend, indemnify, and hold harmless PATRIOT and its subcontractors from any claim, business loss, liability for injury, or loss arising from disregarding PATRIOT'S or its subcontractors' recommendations of reporting.



HISTORIC
FRANKLIN
TENNESSEE

MEMORANDUM

May 15, 2013

To: Board of Mayor and Aldermen
Eric Stuckey, City Administrator

From: Brad Wilson, Facilities Project Manager

Subject:

The purpose of this memorandum is to provide information to the Board of Mayor and Aldermen (BOMA) that on behalf of the Board approval was given to enter a Professional Services Agreement with H & H Land Surveying, Inc. for the layout of the property corners and building envelope located at the future Westhaven site of the Franklin Fire Hall Station 8 located in the Westhaven community. Approximate cost for services \$ 700.00. (COF Contract # 2013-0069)

Background:

With the upcoming design of the prototypical fire hall facility that will be located at the Westhaven site and location of the facility on the property near a retention pond it bares that we perform some surveying work so that a good understanding can be established as to the location of the future facility and how it rests on the site. The site is a tight piece of property that is bound by a retention pond on one side and a road on two other sides. The survey will provide us the information regarding to the building envelope area for a design size. This information will assist staff whether we are designing a one or two story prototypical facility. The site at Berry Farm is also a tight sight which we will be looking to build the same facility at both sites.

Financial Impact:

The cost is based on the layout of the building property lines and the building envelope for a total of \$700.00

Recommendations:

That the board agrees with the approval of the contract between the City of Franklin and H & H Land Surveying, Inc. for the prototypical fire hall for the Westhaven community.

**CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT
COF Contract No 2013-0069**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and **H & H LAND SURVEYING, INC.** hereinafter referenced as Consultant, who mutually agrees 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:

**Site Survey Of Lot #4300 Located Within
The Development Of Westhaven**

1. **SCOPE OF SERVICES.** Consultant shall provide engineering and related technical services for the Project in accordance with the SCOPE OF SERVICES. The SCOPE OF SERVICES as found in **Attachment A** shall be considered as an integral part hereof.
2. Consultant shall be paid a **Fee Not to Exceed Seven Hundred Dollars and No/100 Dollars (\$700.00)** for the work as outlined in SCOPE OF SERVICES AND DUTIES (Attachment A).
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.

**The City Administrator Approved this Agreement on the ____ day
of _____ 2013 under the Authority Granted by the Franklin
Board of Mayor and Aldermen by Resolution 2012-05**

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

BY: _____
Mr. Eric Stuckey
City Administrator
Date: _____

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

ARTICLE 1. SERVICES. Consultant will:

- 1.1 Act for City in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the standards in the industry:
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the City.
- 1.3 Perform all services under the general direction of a senior professional employee, licensed and/or registered in the State of Tennessee, when appropriate.
- 1.4 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by City at all reasonable times.

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

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

ARTICLE 3. GENERAL CONDITIONS.

- 3.1 Consultant, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the Project.
- 3.2 Consultant shall be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the PROJECT acting upon written instruction issued by the Consultant.
- 3.3 Neither City nor Consultant may assign or transfer its duties or interest in this Agreement without written consent of the other party. However, nothing in this Article shall prevent Consultant from

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

3.4 **ALLOCATION OF RISK AND LIABILITY; GENERAL.** Considering the potential liabilities that may exist during the performance of the services of this Agreement, the relative benefits and risks of the Project, and the Consultant's fee for the services rendered, and in consideration of the promises contained in this Agreement, the City and the Consultant agree to allocate and limit such liabilities in accordance with this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.2 **ENVIRONMENTAL RESPONSIBILITY.**

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

ARTICLE 6. SCHEDULE.

6.1 **TIME OF THE ESSENCE.** The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.

6.2 **FORCE MAJEURE.** Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.

6.3 Should City request changes in the scope, extent, or character of the Project, the 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 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 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 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 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**
The 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, 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 Consultant will take affirmative action to ensure that 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.** 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 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 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 City and Consultant for this Project and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by City and Consultant.

ARTICLE 12. DISPUTE RESOLUTION, BREACH.

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

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

ARTICLE 13. SURVIVAL.

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

H & H Land Surveying, Inc.
612A Fitzhugh Blvd
Smyrna, Tennessee 37167
Phone: 615-831-0756 Fax: 615-355-6928

LETTER OF AGREEMENT FOR PROFESSIONAL SERVICES

May 15, 2013

Brad Wilson
Facilities & Project Manager
City Of Franklin, Tennessee
109 3rd Ave. South, Suite 103
Franklin, Tennessee 37064

Brad,

H & H Land Surveying, Inc. (H & H) is pleased to offer the following professional service proposal agreement to **City of Franklin, (Client)** to provide land-surveying services for the below-referenced Project.

PROJECT

The project on which the services hereinafter are to be performed on property located at 200 Whitman Rd. Franklin, TN. Also known as Lot # 4300 on the Westhaven Section 25 & Section 15-(Resub Lot 4022) R.O.W.C. TN. This also being the address of the property being Surveyed.

SCOPE OF SERVICES AND DUTIES ON BOTH CLIENT AND H & H

H & H proposes to provide a Boundary and Setback Staking on the property located on Tax Map64 Parcel 23.15 Williamson County TN. The **CLIENT** shall furnish to **H & H**, in a timely manner, a copy of any previous survey, which the **CLIENT** is privy to, the record description, current owner's deed and address, easements, servitudes, title commitment letter, covenants, and other appropriate information affecting the property to which the survey shall make reference. **H & H** will review this information as provided by the **CLIENT** and the survey will reflect such review.

Upon execution of this agreement, the **CLIENT** acknowledges that he has the authority to authorize the surveyor to enter the property to perform the herein services.

**H & H Land Surveying, Inc.
612A Fitzhugh Blvd
Smyrna, Tennessee 37167**

Phone: 615-831-0756

Fax: 615-355-6928

OWNERSHIP AND USE OF DOCUMENTS

If **H & H's** work product exists in electronic or computerized format, or is transferred in electronic or computerized format (CADD), the stamp, seal and signature shall be original and may not be a computer generated copy, photocopy, or facsimile transmission of the original. Any use or reuse of original or altered CADD materials by **CLIENT**, agents of **CLIENT**, or other parties without the prior review and written approval of **H & H** shall be at the sole risk of **CLIENT**. Further, **CLIENT** agrees to defend, indemnify, and hold harmless from all claims, injuries, damages, losses, expenses and attorney's fees arising out of the unauthorized use, re-use, or modification of these materials. All documents are instruments of service in respect to this project and **H & H** shall retain an ownership and property interest therein including the right of reuse at **H & H's** discretion whether or not the project is completed.

SCHEDULE

Due to unknown factors beyond **H & H's** control such as weather, unusual evidence or lack thereof found in the field, or in the official records, parole evidence, etc., it is not practical to pinpoint a completion date; however, **H & H** anticipates having the surveying services completed within 10 business days from written authorization to proceed.

COMPENSATION

H & H will provide the above scope of services for a lump sum fee, due and payable upon delivery of final documents. Direct expenses related to printing, and overnight delivery fees related to the project are in addition to the below fee.

TOTAL LUMP SUM - \$700.00

Should additional work be required, outside the scope of services noted above, said additional work will be mutually agreed prior to commencing and billed accordingly.

We appreciate the opportunity to provide this proposal and look forward to working with you. If you agree to the terms, please sign and return a copy, which will serve as authorization to proceed with the work.

Sincerely,

Mike Holmes Jr.

Mike Holmes Jr.
H & H Land Surveying, Inc.
Enclosure

CLIENT ACCEPTANCE and AUTHORIZATION TO PROCEED:

By _____ Date _____