



HISTORIC
FRANKLIN
TENNESSEE

ITEM #23
BOMA
03/11/14

MEMORANDUM

March 5, 2014

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator

SUBJECT: **Transfer of Construction Retainage on the Hillsboro Road Improvements Project (Civil Constructors, Contractor) from Republic Bank to Pinnacle Bank**

Purpose

The purpose of this memo is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning the transfer of construction retainage held on behalf of Civil Constructors Inc. on the Hillsboro Road Improvements project from Republic Bank to Pinnacle Bank.

Background

In the original retainage agreement, Civil Constructors Inc. had selected Republic Bank to hold construction retainage funds on its behalf. Republic Bank notified Civil Constructors Inc. it would no longer handle retainage bank accounts. On February 6, 2014, I signed a revised retainage agreement with Civil Constructors and a new bank, Pinnacle Bank.

Financial Impact

On February 14, 2014, construction retainage funds of \$288,799.97 were transferred from Republic Bank to Pinnacle Bank.

Recommendation

As City Administrator, I signed the revised retainage agreement on behalf of the Board.

Attachments:

1. Original retainage agreement including Republic Bank
2. Revised retainage agreement including Pinnacle, Bank.

RETAINAGE AGREEMENT

THIS AGREEMENT, made and entered into this March 25th, 2013 , by and among **City of Franklin** ("Owner"); **Civil Constructors Inc.** ("Contractor"); and **Republic Bank**, a corporation organized and existing under the laws of the United States of America, with offices located in Franklin, Williamson County, Tennessee ("Bank").

WITNESSETH:

WHEREAS, Owner and Contractor have heretofore entered into a construction contract dated the December 11, 2012,(the "Contract"), whereby Contractor will make improvements to certain real property of Owner, pursuant to a certain project known as **Hillsboro Rd Improvements**, located in Franklin, Tennessee, with the contract providing that Owner is to retain a percent of all payment requests of Contractor, all as more specifically set forth in the Contract, to which specific reference is hereby made; and

WHEREAS, Owner and Contractor are desirous of creating an escrow account with Bank for the deposit of such retainage; and

WHEREAS, Bank has agreed to act as escrow agent to receive and hold the retainage paid to it until the receipt of a release or partial release by the Owner.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and promises hereinafter set forth, the parties hereto agree as follows:

1. Owner hereby agrees to pay all retainage held pursuant to the Contract to Bank, to be held in escrow by Bank in a separate interest-bearing account (the "Escrow Account").
2. The Escrow Account shall be owned by Contractor, except to the extent ownership thereof is affected by the assignment to Owner pursuant to the terms hereof.
3. Contractor shall and hereby does conditionally assign all its ownership interest in the Escrow Account, including its power to make withdrawals therefrom, to Owner. This conditional assignment shall terminate upon Owner's execution of a release, to the extent of such release.

4. So long as retainage remains on deposit and Contractor is not in default of Contract, all interest earned on deposited retainage shall go to the Contractor less any custodial care and servicing costs.
5. When Owner determines, upon the request of Contractor, in accordance with the provisions of the Contract, that Contractor is entitled to all or a portion of the retainage, Owner shall forward a written release to Bank, substantially in the forms attached hereto as Exhibit A or Exhibit B, whereupon all or a portion of the amounts held in the Escrow Account may be released and paid, together with any interest thereon, to Contractor by Bank.
6. Should a dispute arise between Owner and Contractor whereby Owner fails to execute and deliver a release to Bank, Bank shall not be liable to either Owner or Contractor for failure to deliver the amounts on deposit in the Escrow Account, with interest thereon, to Contractor. Bank shall transfer the amounts on deposit in the Escrow Account to Owner upon Owner's written request and shall not be liable to Contractor for such action. In the event that litigation ensues between Owner and Contractor, Bank shall tender into the registry or custody of any court of competent jurisdiction all assets or property held by Bank pursuant to the terms of this Agreement, together with such pleadings as it deems appropriate, and thereupon be discharged from all further duties and liabilities under this Agreement.
7. Bank may resign as Escrow Agent by returning all money back to Owner.

City of Franklin

By: *Eric S. Stuebel*

Title: *City Administrator*

Civil Constructors, Inc.

BY FW TREAS

By: Same Retainage on File

Title: *TREASURER*

Republic Bank

By: *J. P.*

Title: *S. V. P.*

578702

(Revised)
1/22/2014

RETAINAGE AGREEMENT ^{AV} LLC

THIS AGREEMENT, made and entered into this DATE 1/22/14 6 2014, by and among City of Franklin ("Owner"); Civil Constructors Inc. ("Contractor"); and ~~Franklin~~ Bank, a corporation organized and existing under the laws of the United States of America, with offices located in Franklin, Williamson County, Tennessee ("Bank").

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WHEREAS, Owner and Contractor are desirous of creating an escrow account with Bank for the deposit of such retainage; and

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City of Franklin

By: Gene S. Steubing

Title: City Administrator

Civil Constructors, Inc. LLC EV

By: Same Retainage on File by Jen

Title: CA TRMS

Bank

By: Sandy Scahill

Title: FFA