



HISTORIC  
FRANKLIN  
TENNESSEE

ITEM #37  
BOMA  
05/25/2010

## MEMORANDUM

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May 11, 2010

TO: Board of Mayor and Aldermen

FROM: David Parker, P.E.; CIP Executive  
Eric S. Stuckey, City Administrator  
Carl Baughman, P.E.; Traffic Engineer  
Kevin E. Comstock; ITS Project Manager

SUBJECT: Consulting Services for Cool Springs Area Signal Improvement and Highway 96 Survey Project (Contract 2010-0057)

### Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) to consider a professional services agreement with Kimley Horn and Associates Inc, for the Cool Springs Area Signal Improvements and Highway 96 Survey Project.

### Background

Engineering and TOC staff budgeted for safety or enhancement improvements to candidate locations in the City of Franklin's signal inventory. The proposed scope of services is for surveying and design for the following projects:

1. **Intersection of Galleria Boulevard and I-65 Southbound Off-Ramp** traffic signal modifications and add pedestrian signalization, internally illuminated street name signs and intersection safety lighting. These improvements will be in accordance with the recommendations made in the Traffic Signal Optimization Study report by Kimley-Horn and Associates, Inc.
2. **Intersection of Mallory Lane and South Springs Boulevard** traffic signal and lane modifications and add pedestrian signalization. These improvements will be in accordance with the recommendations made in the Traffic Signal Optimization Study report by Kimley-Horn and Associates, Inc.
3. **Intersection of Bakers Bridge Boulevard and Carothers Parkway** pedestrian signalization. The installation of pedestrian signals, pushbuttons and crosswalk markings will facilitate pedestrian movements from the adjacent neighborhood to this rapidly developing commercial corner in accordance with the recommendations made in the Traffic Signal Optimization Study report by Kimley-Horn and Associates, Inc.
4. **Intersection of Hwy 96 (Murfreesboro Road) and Southwinds Boulevard/Williamson Square** surveying and base mapping documents only for roadway and traffic signal modifications to be made in-house by the City of Franklin. Those improvements will be in accordance with the recommendations made in the State Route 96 and South Royal Oaks Traffic Signal Synchronization and Timing Optimization report by RPM Transportation Consultants, LLC.
5. **Bidding Phase Services** to include construction documents, bidding services and construction review services.



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## MEMORANDUM

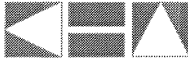
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### **Financial Impact**

Tasks 1-4 are proposed for a lump sum of \$75,000 and Task 5 is not to exceed \$5,300. This will be paid for through the Engineering-TOC budget out of Capital (Equipment >\$10,000). Sufficient funds exist within this line item, which also is projected to end the fiscal year well under budget.

### **Recommendation**

Approval of this agreement is recommended.



Kimley-Horn  
and Associates, Inc.

April 9, 2010

Mr. Carl Baughman, P.E.  
City of Franklin  
Suite 142  
109 Third Avenue South  
Franklin, Tennessee 37064

■  
Suite 150  
5250 Virginia Way  
Brentwood, Tennessee  
37027

Re: **Proposal for Professional Services  
Cool Springs Area Signal Improvements and Highway 96 Survey  
City of Franklin Project TOC10-02  
Franklin, Tennessee**

Dear Mr. Baughman:

Kimley-Horn and Associates, Inc. (“KHA”, “the Consultant”, or “we”) is pleased to submit this letter agreement (the “Agreement”) to the City of Franklin. (“the Client”, “the City”, or “you”) for consulting services to undertake engineering services for the Cool Springs Area Signal Improvements located in Franklin, Tennessee.

#### **PROJECT UNDERSTANDING**

Based upon our conversation and the Request for Proposal (RFP) for Project TOC10-02 (Cool Springs Area Signal Improvements and Highway 96 Survey), we understand that the City wishes to improve traffic operations at three signalized intersections within the city limits of Franklin, Tennessee. These locations are as follows:

1. Intersection of Galleria Boulevard / I-65 Southbound Ramp
2. Intersection of Mallory Lane / South Springs Boulevard
3. Intersection of Bakers Bridge Boulevard / Carothers Parkway

The City wishes for KHA to provide professional engineering services which will consist of surveying, design, construction plans and documents, bidding services, and construction phase services for this purpose. For the following intersection, the City wishes for KHA to provide only surveying and base mapping services:

4. Intersection of Highway 96 / Southwinds Boulevard / Williamson Square

Our scope of services, fee, and schedule are as follows:

■  
TEL 615 564 2701  
FAX 615 564 2702



## SCOPE OF SERVICES

### **Task 1 – Project Management**

This task will consist of general project management, administrative, and accounting activities for the project. It will further consist of a kick-off meeting with City staff and project stakeholders, a project status / review meeting, preparing and distributing project correspondence, scheduling of review meetings and activities, and discussion of any project issues throughout the project.

#### *Task 1.1 – Kick-off Meeting*

KHA will coordinate and facilitate a kick-off meeting with City staff after the official notice-to-proceed has been granted. The purpose of this meeting will be to review the project scope, discuss key issues, and identify other issues so they can be resolved early in the process. A tentative agenda for the kick-off will consist of the following:

- Agency goals for the project
- Points of contact
- Review process
- Project schedule review
- Process of submittals and outline of deliverables (memos, construction documents, electronic and/or hard copies)

#### *Task 1.2 – Project Meeting*

KHA will coordinate and facilitate one project meeting at the 90 percent design stage at a location in Franklin (to be determined by City staff). The meeting will consist of a project status update, plans package review, and discussion of upcoming milestones for both the project team and City staff. KHA will prepare and distribute both a meeting agenda and meeting minutes for the meeting.

*Task 1 KHA Deliverables: Meeting agendas, meeting minutes, action items  
Invoices on a monthly basis*

### **Task 2 – Data Collection**

This task will encompass the collection of the survey and base mapping data necessary for the development of the design plan sheets for this project. The survey data will be collected by our subconsultant, Harrah & Associates, LLC of Brentwood, Tennessee. Harrah & Associates, LLC staff will obtain the necessary survey data to develop the construction plans for the intersection improvements. In addition, field visits will be performed by KHA staff at each of the project intersections.



*Task 2.1 – Survey of Existing Features*

Harrah & Associates, LLC staff will conduct a survey in the vicinity of each of the above intersections in accordance with City of Franklin standards. The survey will consist of the intersection itself, as well as approximately 400 feet along each major approach and approximately 200 feet along each minor approach. The survey will be conducted to determine the location of the following:

- Right-of-way and property lines in the vicinity of the intersection
- Easement locations
- Utilities both underground and above ground
- Pavement widths, existing curbing and pavement markings
- Driveway locations and driveway widths
- Location and widths of sidewalks
- Existing traffic control features including underground conduits by size and condition

The survey data will be related to the Tennessee State Plane Coordinate System, NAD 83, NAVD 88, zone 4100/5301 for incorporation into the Franklin GIS database.

Harrah & Associates, LLC staff will make a request with the Tennessee One Call System, Inc. to mark utilities within the area to be surveyed. It is further understood that if the Tennessee One Call System, Inc. refuses to mark the utilities Harrah & Associates, LLC staff will not make any further search or study as to the location of any underground utilities.

*Task 2.2 – Assemble Base Mapping*

This subtask includes the compilation of the survey data into base mapping for use in the development of the intersection improvements. Once the appropriate survey data has been received and finalized for use with this project, KHA will assemble the base mapping to use as the design plan sheets.

*Task 2 KHA Deliverables:            Survey Base Maps for intersections 1 through 4  
(three hard copies, one digital copy in AutoCAD  
file format)*

**Task 3 – Preliminary Intersection Design Services**

This task shall consist of the development of construction plans and documents for operational and geometric improvements at the project intersections (Intersections 1 – 3 only). The listing of proposed improvements below is based upon recommendations made in the *Traffic Signal Optimization Study* previously completed by KHA. These anticipated improvements by intersection are:

1. Intersection of Galleria Boulevard / I-65 Southbound Ramp  
Traffic signal modifications consisting of pedestrian signalization



(pedestrian signal heads, pushbuttons, crosswalk markings, associated pedestrian traffic signage, and potential adjustments to adjacent sidewalks and ADA ramps), adding internally illuminated street name signs, intersection safety lighting, controller cabinet relocation, new traffic signal poles (consideration of a mast arm and span wire configuration will be assessed), advanced vehicle detection for each intersection approach, additional traffic signs, and pavement marking modifications.

2. Intersection of Mallory Lane / South Springs Boulevard

Improvements consist of traffic signal modifications to add pedestrian signalization (pedestrian signal heads, pushbuttons, crosswalk markings, associated pedestrian traffic signage, and potential adjustments to adjacent sidewalks and ADA ramps). Additional improvements consist of modifications to the northbound and westbound left-turn lanes to increase storage capacity.

3. Intersection of Bakers Bridge Boulevard / Carothers Parkway

Improvements consist of installation of pedestrian signals, pushbuttons and crosswalk markings along with potential adjustments to adjacent sidewalks and ADA ramps.

*Task 3.1 – Preliminary Design (50 Percent Submittal)*

Preliminary Construction Plans (50 percent complete) will be provided to the City for review and comment. For the above three intersections listed under Task 3, KHA will prepare one consolidated set of construction plans that will conform to the *City of Franklin Transportation and Street Technical Standards*, TDOT's current standards, and TDOT's *Roadway Design Guidelines*. The plans will be prepared suitable for competitive bidding for the City and will consist of the following:

- Cover sheet, index sheets, legend, general notes
- Details and notes sheets
- Existing Conditions plans
- Proposed Layout plans
- Traffic Signal plans

*Task 3.2 – Preliminary Design Submittal and Review*

KHA will assemble and submit up to two copies of the 50 percent plans package (11 inch by 17 inch sheet size) to City staff for review. A 50 percent design review meeting will not be facilitated by KHA staff; rather City staff will compile, consolidate, and resolve internal review comments and provide one consolidated / official set of City comments to KHA staff. These will be provided via a single marked-up set of plans.

*Task 3 KHA Deliverables: 50 percent plan set  
(two hard copies and PDF format)  
Minutes from review meeting*



#### **Task 4 – Final Intersection Design Services**

KHA will coordinate with the City regarding any comments and recommended revisions that were received on the 50 percent construction plans. After all comments and issues have been received and addressed, KHA will prepare a draft final plan set (90 percent construction plans) for submittal to the City. This subtask extends the design efforts in Task 3 and produces a final design package that includes all updated plan sheets, detail sheets, and related design sheets that were submitted in the 50 percent plans package. The draft final construction plans will consist of the following sheets:

- Cover sheet, index sheets, legend, general notes
- Quantities sheets
- Details and notes sheets
- Existing Conditions plans
- Proposed Layout, Grading, and Drainage plans
- Traffic Signal plans

##### *Task 4.1 – Draft Final Engineer’s Opinion of Probable Cost*

KHA staff will prepare a detailed engineer's opinion of the probable construction cost of the improvements as defined by the plans and specifications. The opinion of probable cost will be based on actual bid prices for recent projects which involved similar equipment and construction, to the extent that such information is available.

##### *Task 4.2 – Bid Book Preparation*

As part of the draft final design, KHA staff will prepare bid books consistent with City of Franklin standards so that the project can be let for competitive bidding. It is understood that City of Franklin staff will provide the necessary front-end ‘boiler plate’ contract language and that only minor modifications to the *Microsoft Word* document provided by City staff will be necessary by KHA staff. KHA will be responsible for the development of technical specifications related to the intersection improvements that are not currently specified by either the current *TDOT Standard Specifications for Road and Bridge Construction (March 2006)* and/or the *City of Franklin Transportation and Street Technical Standards*. The bid books will contain the Request for Proposals, the contract documents, bid forms, specifications, and required special provisions.

##### *Task 4.3 – Draft Final Design Submittal and Review*

This subtask addresses the specific steps involved with preparation of a draft final (90 percent) level design package and submittal of same to the City for review.

- Assemble and submit up to two copies of the 90 percent plans package (11 inch by 17 inch sheet size), which includes the plan set, the engineering opinion of probable construction cost, and the bid book.
- Review meeting will be held with the City to review the submitted 90 percent design package. This review meeting will be considered as the project status meeting referenced in Task 1. KHA will prepare meeting



minutes, action items, and responses to questions / comments at the conclusion of the meeting.

*Task 4.4 – Final Construction Plans Package Preparation*

Once all of the 90 percent comments have been consolidated and resolved, the final construction plans package will be prepared by KHA staff. The plans will be prepared on 24 inch by 36 inch bond sheets, signed and sealed by a State of Tennessee licensed Professional Engineer. In addition, the bid book will be finalized and prepared in *Microsoft Word* format and the final engineer's opinion of probable construction cost will be prepared.

*Task 4 KHA Deliverables:*

- 90 percent plans set  
(five hard copies and PDF format)*
- 90 percent engineer's opinion of probable cost  
(hard copy and PDF format)*
- 90 percent bid book  
(hard copy and PDF format)*
- Minutes from review meeting*
- Final sealed plans for bidding (four sets)*
- Final bid book (hard copy and PDF format)*
- Final engineer's opinion of probable cost  
(hard copy and PDF format)*
- Electronic copy of all Final plan sheets  
(AutoCAD and PDF format)*

*Task 4 City Deliverables:*      *Front-end 'boiler plate' contract language*

**Task 5 – Bidding Phase Services**

KHA will provide assistance to the City during the bidding phase of this intersection improvement project. KHA assistance and participation as requested by City staff will be provided as detailed in the sub-tasks below.

*Task 5.1 – Distribute Bid Documents*

KHA staff will provide and distribute copies of the bidding documents for prospective contractors and create a plan holder list to track all plan holders. The bid documents will consist of the plans package, the bid book (project manual), and a bid form. We will establish and charge prospective contractors a non-refundable fee for the documents which will be based upon our reproduction costs.

*Task 5.2 – Prepare Bid Addenda*

KHA staff will prepare up to two (2) addenda during the bidding phase. As part of this task KHA staff will receive and document all contractor and supplier questions during the bidding phase and respond to the questions and inquiries via a formal bid addendum.





*Task 5.3 – Bid Opening / Bid Tabulation Services*

KHA will facilitate a bid opening to receive and record contractor bids for the project. Following the bid opening, KHA staff will tabulate the bids received and evaluate the compliance of the bids received with the bidding documents. KHA will prepare a written summary of this tabulation and evaluation. KHA will submit the bid tabulation and other required documentation to the City for review and approval.

*Task 5 KHA Deliverables: Bid Tabulation / Summary*

**Task 6 – Construction Phase Services**

We understand that City staff will lead day-to-day construction administration and inspection activities. However, KHA assistance and participation as requested by City staff will be provided as detailed in the sub-tasks below.

*Task 6.1 – Pre-Construction Meeting*

Upon award of the construction contract, KHA staff will participate in a pre-construction meeting to outline project goals and expectations. However, it is understood that City staff will facilitate and document the meeting.

*Task 6.2 – Shop Drawing Review*

KHA will review, comment on, and reject or approve shop drawings and samples and other data which the Contractor is required to submit, but only for conformance with the information in the Contract Documents and the City / TDOT standards. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

*Task 6.3 – Site Visits and Observation of Construction*

KHA will provide on-site construction observation services during the construction phase. Specifically, KHA staff will coordinate with City staff and the Contractor to review the staked field placements of the proposed traffic signal upgrades prior construction. KHA staff will make visits at intervals as directed by City staff in order to observe the progress of the work. Such visits and observations by KHA staff are not intended to be exhaustive or to extend to every aspect of the Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the work based on Consultant's exercise of professional judgment. Up to six (6) have been budgeted in the Task 6 budget referenced at the end of this document; however additional site visits can be provided as Additional Services, if requested by City staff.

The purpose of the Consultant's site visits will be to enable the Consultant to better carry out the duties and responsibilities specifically assigned in this Agreement, and to provide the Client a greater degree of confidence that the completed work will



conform in general to the Contract Documents. The Consultant shall not, during such visits or as a result of such observations of the Contractor's work in progress, supervise, direct, or have control over the Contractor's work, nor shall KHA have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by the Contractor, for safety precautions and programs incident to the Contractor's work, nor for any failure of the Contractor to comply with laws and regulations applicable to the Contractor's furnishing and performing the work. Accordingly, the Consultant neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract documents.

Concerning limitations of responsibility, the Consultant shall not be responsible for the acts or omissions of any contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the work. The Consultant shall not have the authority or responsibility to stop the work of any contractor.

*Task 6.4 – Clarifications and Interpretations*

KHA will respond to reasonable and appropriate Contractor requests for information (RFI) and issue necessary clarifications and interpretations of the Contract Documents to the City as appropriate to the orderly completion of the Contractor's work. Any orders authorizing variations from the Contract Documents will be made by the City. Up to 12 RFI's have been budgeted in the Task 6 budget referenced at the end of this document; however, additional RFI's can be handled by KHA staff as Additional Services, if requested by City staff.

*Task 6.5 – Substantial Completion*

Promptly after notice from the Contractor that he/she considers the entire work ready for its intended use; the Consultant will accompany City staff and the Contractor to conduct a site visit to determine if the work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list (punch list to be prepared by City staff). The Consultant will accompany City staff for a final site visit to determine if the completed work of the Contractor is generally in accordance with the contract documents and that the final punch list has resolved.

*Task 6 KHA Deliverables:*                    *Pre-construction Meeting Minutes*  
    *Shop Drawing Review Correspondence*  
    *Contractor RFI Responses*

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**Task 7 – Additional Services**

Any services not specifically provided in the above scope, as well as any changes in the scope you request, will be considered Additional Services and will be performed at our current hourly rates as we agree prior to their performance. Additional Services we can provide include, but are not limited to, the following:

- 1) Prepare property acquisition documents
- 2) Attendance at review meetings and / or public hearings outside of those defined above
- 3) Additional data collection and traffic engineering analyses
- 4) Additional intersection modifications / designs
- 5) Additional traffic signal designs / modifications
- 6) Additional traffic signing / pavement marking plans
- 7) Landscape / streetscape / hardscape design services for the project intersections (i.e. Galleria Boulevard / I-65 Southbound Ramp intersection)
- 8) Traffic signal system design
- 9) Traffic signal timing optimization services
- 10) Packaging of the intersection designs into individual bid packages
- 11) Bid advertisement services
- 12) Others as requested by you

**INFORMATION PROVIDED BY CLIENT**

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client. The Client shall provide all information requested by KHA during the project, including but not limited to the following:

- Front-end 'boiler plate' contract language for the bid book
- As-built traffic signal plans or file drawings (if available)

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**FEE, BILLING, AND SCHEDULE**

KHA will perform the Scope of Services outlined in Tasks 1 through 4 for a lump sum fee of \$75,300.00 inclusive of direct expenses. KHA will perform the Scope of Services outlined in Task 5 (Bidding Phase Services) and Task 6 (Construction Support Services) on a labor fee plus expense basis. We recommend the City budget \$5,300 for Task 5 efforts and \$11,400 for Task 6 efforts based upon assumptions detailed in the Task 5 and 6 scope items above. These fees are also further broken down by task below:

<i>Task 1 – Project Management</i>	<i>\$6,500</i>
<i>Task 2 – Data Collection</i>	<i>\$30,100</i>
<i>Task 3 – Preliminary Intersection Design Services</i>	<i>\$17,700</i>
<i>Task 4 – Final Intersection Design Services</i>	<i>\$21,000</i>
<hr/>	
Lump Sum Tasks Subtotal (lump sum inclusive of direct expenses):	\$75,300
<i>Task 5 – Bidding Phase Services</i>	<i>\$5,300</i>
<i>Task 6 – Construction Phase Services</i>	<i>\$11,400</i>
<hr/>	
Hourly Tasks Subtotal (hourly plus direct expenses):	\$16,700
Project Total (lump sum tasks 1-4 and hourly tasks 5 and 6 combined):	\$92,000

The labor fee for hourly tasks will be billed according to the attached rate schedule, which is subject to annual adjustment. Direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at cost. An amount will be added to each invoice to cover certain other expenses such as in-house duplicating, local mileage, telephone calls, facsimiles, postage, and word processing. Administrative time related to the project may be billed hourly. Technical use of computers for design, analysis, GIS, and graphics, etc. will be billed at \$15.00 per hour.

KHA will perform the services described in Task 7 (Additional Services) of the Scope of Services on a labor fee plus expense basis. Effort associated with Task 7 will not be performed without authorization from you.

All permitting, application, and similar project fees will be paid directly by the Client.

Billing will be monthly based upon a percentage completed of lump sum elements or for services actually accomplished for hourly rate elements. Billing will be due and payable within 25 days.



Given notice to proceed, we will undertake the services listed in Tasks 1 through 4 provide the services described in the above scope of services based upon the following five (5) month schedule:

<u>Task</u>	<u>Milestone</u>
1 – Project Management	on-going throughout the design schedule
2 – Data Collection	60 days following notice to proceed
3 – Preliminary Design	60 days following Task 2 completion
4 – Final Design	30 days following receipt of City review comments

**CLOSURE**

In addition to the matters set forth herein, our Agreement shall include and be subject to the terms and conditions in the attached City of Franklin Professional Services Agreement, which are incorporated by reference. As used in the City of Franklin Professional Services Agreement, the term “the Consultant” shall refer to Kimley-Horn and Associates, Inc., and the term “the Client” shall refer to the **City of Franklin, Tennessee**.

KHA, in an effort to expedite invoices and reduce paper waste, offers its clients the option to receive electronic invoices. These invoices come via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please select a billing method from the choices below:

\_\_\_\_ Please email all invoices to \_\_\_\_\_@\_\_\_\_\_.\_\_\_\_\_.

\_\_\_\_ Please email invoices to \_\_\_\_\_@\_\_\_\_\_.\_\_\_\_\_ AND provide a hard copy to the address listed above (please note below if it should be to someone else’s attention or an alternative address).

\_\_\_\_ Please ONLY provide a hardcopy invoice to the address listed above (please note below if it should be to someone else’s attention or an alternative address).

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.



We appreciate the opportunity to provide these services to you. Please contact us if you have any questions.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Sean H. Coleman, P.E.  
Project Manager

Christopher D. Rhodes, P.E.  
Vice President

Attachments: City of Franklin Professional Services Agreement

Agreed to this \_\_\_\_ day of \_\_\_\_\_, 2010.

**CITY OF FRANKLIN, TENNESSEE**  
**A Municipality**

\_\_\_\_\_  
David Parker, City Engineer / CIP Executive  
(Print or Type Name and Title)

\_\_\_\_\_  
(Email Address)

\_\_\_\_\_, Witness

\_\_\_\_\_  
(Print or Type Name)

Official Seal:



**Kimley-Horn and Associates, Inc.**  
**Hourly Rate Schedule**  
Valid through December 31, 2010

<b>Category</b>	<b>Hourly Billing Rate</b>
Senior Project Manager / Principal	\$200 – \$220
Senior Professional	\$145 – \$200
Professional	\$85 – \$145
Senior Technical Support	\$110 – \$120
Technical Support	\$75 – \$100
Support Staff	\$60 – \$80



Kimley-Horn  
and Associates, Inc.

**JOB NAME:** Cool Springs Area Signal Improvements &  
Highway 96 Survey

**PROJECT PHASE:** Survey, Design, Bidding, Construction Support

**DATE:** 3/31/2010, Revised 04/08/2010

**PREPARED BY:** JMM / SHC

**CHECKED BY:** CDR

**Cool Springs Area Signal Improvements & Highway 96 Survey  
City of Franklin, Tennessee**

Labor Task / Task Description:		Project Manager	Senior Engineer	Engineer	Analyst/CADD	Accounting	Support Staff	Task Hour Subtotals	Task Fee Subtotals		
<b>Task 1</b>	<b>PROJECT MANAGEMENT</b>	12.0	0.0	21.0	6.0	8.0	12.0	59.0	\$ 6,227.50		
	Monthly Project Management/Accounting/Administrative	6.0	0.0	12.0	6.0	8.0	10.0	42.0	\$ 4,135.00		
	Kick-off Meeting	3.0		3.0			1.0	7.0	\$ 877.50		
	Project Status Meeting (1)	3.0		6.0			1.0	10.0	\$ 1,215.00		
<b>Task 2</b>	<b>DATA COLLECTION</b>	4.0	0.0	20.0	32.0	0.0	0.0	56.0	\$ 5,680.00		
	Coordination with Surveyor			1.0	4.0			5.0	\$ 462.50		
	Assemble and Compile Base Mapping			2.0	6.0			8.0	\$ 750.00		
	Develop Plan Sheets			4.0	10.0			14.0	\$ 1,325.00		
	Field Observations / Inventories	4.0		13.0	12.0			29.0	\$ 3,142.50		
<b>Task 3</b>	<b>PRELIMINARY DESIGN</b>	5.0	14.0	45.0	93.0	0.0	2.0	159.0	\$ 16,082.50		
	Geometric Design		1.0	10.0	8.0			19.0	\$ 1,965.00		
	Signing and Marking Plan			4.0	8.0			12.0	\$ 1,150.00		
	Traffic Signal Design (1 total rebuild, 2 pedestrian upgrades)	1.0		16.0	36.0			53.0	\$ 5,107.50		
	Lighting Design		3.0		1.0			4.0	\$ 507.50		
	Assemble Details			3.0	6.0			9.0	\$ 862.50		
	Plans Preparation	2.0	4.0	10.0	30.0			46.0	\$ 4,625.00		
	QA/QC	2.0	6.0					8.0	\$ 1,155.00		
	Submit for Review			2.0	4.0		2.0	8.0	\$ 710.00		
<b>Task 4</b>	<b>FINAL DESIGN</b>	14.5	15.5	55.0	90.0	0.0	20.0	195.0	\$ 19,866.25		
	Final Geometric Design		1.0	4.0	6.0			11.0	\$ 1,115.00		
	Final Drainage Design		1.0	6.0	10.0			17.0	\$ 1,690.00		
	Final Signing and Marking Plan			2.0	4.0			6.0	\$ 575.00		
	Final Traffic Signal Design	1.0		6.0	12.0			19.0	\$ 1,882.50		
	Lighting Design		1.0		2.0			3.0	\$ 315.00		
	Finalize Details			1.0	2.0			3.0	\$ 287.50		
	Final Quantity Estimate			2.0	6.0			8.0	\$ 750.00		
	Final Cost Estimate	0.5	0.5					1.0	\$ 148.75		
	Contract Documents / Technical Specifications	8.0	2.0	20.0			16.0	46.0	\$ 4,870.00		
	90% Plans Preparation	1.0	2.0	6.0	24.0			33.0	\$ 3,212.50		
	QA/QC	2.0	6.0					8.0	\$ 1,155.00		
	Submit to Client for Reviews			2.0	6.0		2.0	10.0	\$ 885.00		
	Make Final Revisions	1.0	2.0		6.0			9.0	\$ 962.50		
	Prepare Final Plans	1.0		4.0	8.0			13.0	\$ 1,307.50		
	Submit Final Plans			2.0	4.0		2.0	8.0	\$ 710.00		
<b>Task 5</b>	<b>BIDDING PHASE SERVICES</b>	6.0	0.0	14.0	4.0	0.0	18.0	42.0	\$ 4,085.00		
	Distribute Bid Documents	1.0					8.0	9.0	\$ 697.50		
	Develop and Populate Plan Holder Tracking Form	1.0					6.0	7.0	\$ 562.50		
	Prepare Bid Addenda (2)	2.0		12.0			2.0	16.0	\$ 1,800.00		
	Bid Opening / Bid Tabulation	2.0		2.0	4.0		2.0	10.0	\$ 1,025.00		
<b>Task 6</b>	<b>CONSTRUCTION PHASE SERVICES</b>	17.0	2.0	66.0	0.0	0.0	6.0	91.0	\$ 10,787.50		
	Pre-Construction Meeting	2.0		2.0				4.0	\$ 540.00		
	Shop Drawing Review	1.0		12.0			2.0	15.0	\$ 1,642.50		
	Site Visits / Construction Observation (6)	6.0		20.0				26.0	\$ 3,195.00		
	Respond to RFI's (12)	2.0	2.0	14.0			4.0	22.0	\$ 2,440.00		
	Substantial Completion Review			12.0				12.0	\$ 1,350.00		
	Final Walk Through	6.0		6.0				12.0	\$ 1,620.00		
	<b>Hour Totals:</b>	58.5	31.5	221.0	225.0	8.0	58.0	602.0			
	<b>Hourly Rate:</b>	\$ 157.50	\$ 140.00	\$ 112.50	\$ 87.50	\$ 80.00	\$ 67.50				
	<b>Extension:</b>	\$ 9,213.75	\$ 4,410.00	\$ 24,862.50	\$ 19,687.50	\$ 640.00	\$ 3,915.00				
								<b>Labor Total:</b>	\$ 62,728.75		
Expenses (Tasks 1 - 4):								Unit	Quantity	Rate	Extension
Direct Expenses (allocation, in-house copying, external copying, mileage, etc.)								LS	1	\$ 3,420.69	\$ 3,420.69
Surveying Subconsultant (Harrah & Associates, LLC)								LS	1	\$ 24,000.00	\$ 24,000.00
								<b>Tasks 1-4 Expense SubTotal:</b>			\$ 27,420.69
Expenses (Tasks 5-6):								Unit	Quantity	Rate	Extension
Direct Expenses (allocation, in-house copying, mileage, etc.)								LS	1	\$ 1,094.80	\$ 1,094.80
Plan Sets & Bid Books								Each	15	\$ 150.00	\$ 2,250.00
Contractor Reimbursement of Plan Sets & Bid Books								Each	10	\$ (150.00)	\$ (1,500.00)
								<b>Tasks 5-6 Expense SubTotal:</b>			\$ 1,844.80

<b>Lump Sum Task Totals:</b>	<b>1</b>	<b>\$ 6,500.00</b>	<b>Hourly Task Totals:</b>	<b>5</b>	<b>\$ 5,300.00</b>
(includes labor and expenses)	<b>2</b>	<b>\$ 30,100.00</b>	(includes labor and expenses)	<b>6</b>	<b>\$ 11,400.00</b>
	<b>3</b>	<b>\$ 17,700.00</b>		<b>Total:</b>	<b>\$ 16,700.00</b>
	<b>4</b>	<b>\$ 21,000.00</b>			
	<b>Total:</b>	<b>\$ 75,300.00</b>			



CITY OF FRANKLIN, TENNESSEE  
PROFESSIONAL SERVICES AGREEMENT  
COF Contract No. 2010-0057

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is by and between the City of Franklin, Tennessee, hereinafter referenced as City, and Kimley-Horn and Associates, 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:

**Cool Springs Area Signal Improvement  
And Highway 96 Survey**

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 paid a **Lump Sum Fee of \$75,300 for Tasks 1 – 4 and a Not to Exceed Amount of \$5,300 for Task 5** as the tasks are detailed the SCOPE OF SERVICES. Billing shall be based on the Hourly Rate Schedule as found in the SCOPE OF SERVICES and reimbursables at cost to the Consultant.
3. In event of a conflict between this Agreement and the attached document(s), this Agreement shall supersede conflicting terms and conditions.

The Board of Mayor and Aldermen Approved this Agreement on the  
— Day of \_\_\_\_\_ 201\_\_.

BY: _____	BY: _____
Consultant’s Signature	John C. Schroer
TITLE: _____	Mayor
Date: _____	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 in accordance with statutory requirements and 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 upon written request 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.
- 8.3 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](http://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.

Approved as to form by Law Department June 2009.