

RESOLUTION NO. 26818

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO AN AGREEMENT WITH FRANKLIN & ASSOCIATES FOR THE DEVELOPMENT OF SPECIFICATIONS INVOLVING DEMOLITION, UTILITY RE-ROUTING, HAZARDOUS MATERIALS, ABATEMENT, SITE WORK, ETC. RELATIVE TO PHASE II OF THE HIXSON COMMUNITY CENTER PROJECT, IN AN AMOUNT NOT TO EXCEED SEVENTY-NINE THOUSAND ONE HUNDRED DOLLARS (\$79,100.00).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator of the Department of Parks and Recreation is hereby authorized to enter into an agreement with Franklin & Associates for the development of specifications involving demolition, utility re-routing, hazardous materials, abatement, site work, etc. relative to Phase II of the Hixson Community Center Project, in an amount not to exceed \$79,100.00.

ADOPTED: August 23, 2011

/mms

PROFESSIONAL SERVICES AGREEMENT

8-23-11
Approved by
CRF

This agreement is made as of August ____, 2011, by and between Franklin Associates, Architects, Inc. (Architect) and City of Chattanooga (Owner) for professional services for the assignment described as follows:

Project: Building and Site Demolition - Hixson Middle School as shown in Exhibits "A" and "B"
Location: Hixson, TN
Description of Project: Architectural services for the building and site demolition of Hixson Middle School for the purpose of creating a municipal recreation center.

I. **Scope of Services:** In connection with the Project, Architect agrees to perform the following services associated with the Project:

1. DATA COMPILATION AND REVIEW

- a. Architect will contract with Barge Waggoner Sumner Cannon (hereinafter "BWSC") as the civil and environmental engineers on the Project and with Bennett & Pless (hereinafter "Bennett") as the structural engineers on the Project, jointly referred to as the Project "Team."
- b. Architect will contract with Barge Waggoner Sumner Cannon (BWSC) to conduct an environmental survey (asbestos, lead paint, etc.) as required for preparation of demolition plans for the Project.
- c. The Project Team will review Owner provided, as-built drawings and electronic information obtained from sources such as Hamilton County GIS regarding the Project.
- d. The Project Team will interview local utility providers to discern existing utility placement, easements, and issues impacting the vacating of utility easements.
- e. The Project Team will interview local planners to determine what steps are required to revise plat, if necessary.
- f. The costs of any surveying shall not be included in this Agreement.

2. BID PACKAGE DEVELOPMENT

- a. The Project Team will prepare specifications to outline Project requirements, Owner requirements, and terms of the construction contract including insurance, requirements of the contractor and permitting information.
- b. The Project Team will prepare a Storm Water Pollution Prevention Plan (SWPPP) and documents required for a Land Disturbance Permit.
- c. The Project Team shall prepare an abatement plan for the removal of specified hazardous material prior to demolition, including guidelines for proper disposal of environmental materials and demolition debris.
- d. The Project Team shall prepare demolition plans for the removal of five (5) buildings, parking facilities, play courts, and ancillary structures from the Project area, as shown in Exhibit B.

- e. The Project Team will verify all building services are either maintained after demolition operations are completed or describe any new work that may be required to ensure service to the buildings occurs.
- f. Using as-built information, the Project Team will verify and report to the Owner the stability of existing walls adjacent to demolition operations as shown in Exhibits A and B.
- g. Using as-built information, the Project Team will verify exiting requirements of existing buildings are being maintained by authorities having jurisdiction over the buildings.
- h. The Project Team will review documents with City permitting officials and local utility companies prior to any permitting in order to coordinate the elements of proposed work.
- i. The Project Team will assist the Owner in submitting plans to any authorities having jurisdiction for permitting for the demolition Project.

3. BID ADMINISTRATION

- a. The Project Team will assist the Owner in issuing packages required to secure construction bids.
- b. The Project Team will assist the Owner in the development of newspaper advertisements for the public bidding process.
- c. The Project Team will attend the pre-bid meeting for construction bids.
- d. The Project Team will respond to contractor questions during the public bidding process, including preparing any addendum that is required.
- e. The Project Team will review all construction bids and prepare a bid tabulation that will be reviewed with the Owner.
- f. The Project Team will make a written recommendation for award of the construction contract.

4. CONSTRUCTION ADMINISTRATION SERVICES

- a. The Project Team will perform periodic construction administration of the Project.
- b. The Project Team will attend a pre-construction meeting.
- c. The Project Team will review the Project site on a weekly basis and members of the Team will attend bi-weekly construction progress meetings.
- d. The Project Team will receive and approve Project required submittals forwarded by the Project contractor that is chosen by the Owner.
- e. The Project Team will provide answers to requests for information and verify Project construction standards are applied by the contractor.
- f. The Project Team will review "Applications for Payment" submitted by the contractor for completeness and forward to the Owner for payment.
- g. The Project Team will review proposed disposal sites for compliance to the specifications for the Project and the Tennessee Department of Environment & Conservation.
- h. The Project Team will evaluate all manifest and shipping tickets that are generated and prepare a final report detailing waste and debris disposal information.

- i. The Project Team will review the contractor's punch list and verify substantial and final completion of the Project.
- II. **Compensation:** Owner shall compensate Architect for the Basic Services as follows:
 1. Basic Architectural Services as defined in the Scope of Services \$77,600.00
 2. Expenses such as mileage, printing, reproduction, etc. will be billed directly with a ten percent (10%) mark up. Such expenses under this Agreement shall not exceed \$1,500.00.
 3. Owner shall pay Architect for additional services beyond the Basic Services in accordance with the hourly rate schedule attached to this Agreement as Exhibit "C" only when such services are authorized in writing by the Owner.
 4. In no event shall the total compensation under this Agreement exceed \$79,100.00 without the express written consent of the Owner.
- III. **Payments:** Invoices for services rendered will be issued monthly, and payment is due upon receipt of each invoice. Unless special arrangements are made, a finance charge of 1-1/2% per month will be added to unpaid balances more than thirty (30) days old. In the event legal action is necessary to enforce the terms of this agreement, the prevailing party in the litigation shall be entitled to a judgment for its attorney's fees and court costs.
- IV. **Time:** Unless agreed otherwise in writing, Architect will commence services in reasonable time and be complete within eight (8) months after receipt of an executed copy of this Agreement. Architect will perform its services in a timely manner commensurate with the exercise of due professional care. Time for performance shall be extended as necessary for delays or suspensions due to circumstances beyond Architect's control.
- V. **Suspension of Services:** If Owner fails to pay any invoice when due or otherwise is in material breach of this Agreement, Architect may at its sole discretion suspend performance of services upon five (5) days' written notice to Owner. Architect shall have no liability to Owner, and Owner agrees to make up claim for any delay or damage as a result of such suspension. Upon cure of the cause of the suspension, Architect shall resume services within a reasonable time, and there shall be an equitable adjustment of the project schedule to reflect the effects of such suspension.
- VI. **Standard of Care:** Notwithstanding any other provision of the Agreement or any other document describing the services, Architects shall perform services in accordance with the standard of professional care ordinarily exercised under similar circumstances by reputable members of its profession in the same locality at the time the services are provided. No warranty, expressed or implied, is made or intended by Architect. The parties further agree that Architect is not a fiduciary of Owner.
- VII. **Termination:** The obligation to provide further services under this Agreement may be

terminated without cause by either party upon ten (10) days' written notice to the other party. On termination by either Owner or Architect, Owner shall pay Architect all amounts due for any services performed to the date of termination (plus all reimbursable expenses incurred).

- VIII. **Discrimination:** There shall be no discrimination as to race, gender, religion, color, creed or national origin against any worker, employee or applicant or any member of the public in the operations referred to by this Agreement; and further, there shall be no discrimination regarding any use, service, maintenance, or completion of the Project, nor will Architect allow any subcontractors or members of the Project Team to so discriminate.
- IX. **Ownership and Reuse of Documents:** The drawings, specifications and other documents prepared by the Architect for this project shall become the sole property of the Owner. The architect may maintain copies thereof for its records and for its further professional endeavors. The drawings, specifications and other documents are not intended by the Architect for use on other projects by the Owner or others. Any reuse by the Owner or by third parties without the written approval of the Architect shall be at the sole risk of the Owner and the Owner shall indemnify and save harmless the Architect from any and all liability, costs, claims, damages, losses and expenses, including attorney's fees arising out of or resulting from, such reuse; provided, however that this agreement to indemnify and save harmless shall not apply to any reuse of documents retained by or through the Contractor.
- X. **Access to the Site/Jobsite Safety:** Unless otherwise stated, Architect will have access to the site for activities necessary for the performance of its services. Owner agrees that Architect shall have no responsibility for the means, methods, sequences, procedures, techniques, and scheduling of construction, as these decisions are solely the responsibility of the contractors. Architects further shall have no authority or duty to supervise the construction workforce and shall not be responsible for jobsite safety or for any losses or injuries that occur at the Project site.
- XI. **Insurance:** The Architect shall maintain errors and omissions insurance at all times while this Agreement is in effect and for a period of four (4) years following the conclusion of this Agreement. Coverage shall be in the minimum amount of One Million (\$1,000,000) Dollars. Architect agrees to give thirty (30) days notice to the Owner prior to any cancellation of said coverage. Said coverage shall be written by an insurer acceptable to the Owner and shall be in the form acceptable to the Owner's attorney.
- XII. **Records:** All records relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Architect or the Architect's consultants, shall be made available for inspection and copying upon written request to the Owner. Additionally, said records shall be made available, upon request by the Owner, to any state, federal or other regulatory authorities, and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design and its construction. Said records expressly include those documents reflecting the time expended by the Architect and its

personnel to perform the obligations of this Agreement and the records of expenses incurred by the Architect in its performance under said Agreement. The Architect shall maintain and protect these records for no less than six (6) years after final completion of the Project, or for any longer period of time as may be required by applicable law, good architectural practice, and upon notice during the pendency of any claims or litigation arising from the Project.

- XIII. **Dispute Resolution:** It is agreed that all claims disputes, or other matters in question arising out of or related to this Agreement shall be submitted to nonbinding mediation before any legal proceeding is commenced. The parties shall equally bear the fees and expenses charged by the mediator.

- XIV. **Opinions of Construction Cost:** Any opinion of probable construction cost prepared by Architect represents the judgment of one or more of Architect's design professionals and is supplied for general guidance of Owner. Since Architect has no control over the construction marketplace and does not use the same pricing methods used by contractors, Architect does not guarantee the accuracy of such opinions.

- XV. **Governing Law:** Unless otherwise specified within this Agreement, this Agreement shall be governed by the laws of the State of Tennessee.

Franklin Associates, Architects, Inc.

**City of Chattanooga
Parks and Recreation Department**

By: _____

By: _____

Robert A. Franklin

Lawrence A. Zehnder

Print Name

Print Name

Title

Title

Address: 142 North Market Street
Chattanooga, TN 37405

Address: 1102 S. Watkins Street
Chattanooga, TN 37404