

RESOLUTION 24-32

A RESOLUTION TO AUTHORIZE THE MAYOR TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH OHM ADVISORS FOR ON-CALL ENVIRONMENTAL ENGINEERING SERVICES

WHEREAS, the City of Spring Hill has identified the need for on-call engineering services to perform services related to proposed development reviews; and

WHEREAS, a Request for Qualifications was advertised and Statement of Qualifications were opened on November 11, 2023; and

WHEREAS, five (5) Statement of Qualifications were received with staff review selecting two (2) to enter in to a Professional Services Agreement with the City; and

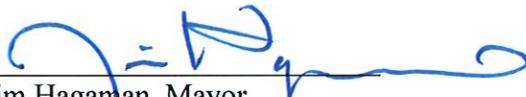
WHEREAS, City staff recommends entering in to a Professional Services Agreement with OHM ADVISORS for a period of three (3) years from date of execution with the option to renew for three (3) twelve (12) month periods if both parties are in agreement for extension; and

WHEREAS, cost of services will be based on a fee schedule included as part of this Resolution.

NOW, THEREFORE BE IT RESOLVED, the City of Spring Hill Board of Mayor and Aldermen:

1. Approve the Professional Services Agreement with **OHM ADVISORS** for on-call environmental engineering services to be utilized on as an-needed basis, attached hereto.
2. Authorize the Mayor to execute the Professional Services Agreement, attached hereto.

Passed and Adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee on the 5TH day of February, 2024.


Jim Haganan, Mayor

ATTEST:


April Goad, City Recorder

LEGAL FORM APPROVED:


Patrick Carter, City Attorney

Discussion Item: Adoption of a Policy Statement, Vendor Contracts, Updated Fee Schedule, and On-Call Service Ordinance as it relates to Third-Party Plan Reviews for Development Services.

Request: Staff is requesting to enact a Third-Party Review service for Development.

History: The Development Services Department conducts all development application plan reviews and coordinates those reviews with the other City departments (Utilities, Public Works, Fire, Buildings, Parks and Recreation, Engineering, and Planning). To provide the level of service in the time set by the BOMA, a Third-Party Review process is being requested.

City Interdepartmental Cooperation: The Development Services Department has discussed this process and policy with the other City departments (Utilities, Public Works, Fire, Buildings, Parks and Recreation, Engineering, and Planning) and has received a supportive consensus for this process and policy.

Changes: Development Services Department will facilitate the review process through the Third-Party Plan Review Agency and coordinate that review with other City departments (Utilities, Public Works, Fire, Buildings, Parks and Recreation, Engineering, and Planning). All City departments will review the recommendation provided by the Third-Party Review Agency to add additional concerns or agree with the recommendation as presented. Only the City will have the ability to approve development applications or release permits.

Look Ahead: The Third-Party Plan Review Services is a temporary measure to assist the Development Service Department accomplish the vision and mission of the City of Spring Hill to regulate smart development of the City to the Unified Development Code in the time directed by the Board of Mayor and Alderman until such time as City has sufficient staff to complete the reviews without assistance.

Conclusion: Staff recommends that the Board of Mayor and Alderman adopt these Resolutions for the Third-Party Review Services. The adoption of these Resolutions and Ordinance will help city staff, design engineers, contractors, and developers accomplish the City's mission and vision to as it pertains to smart growth.

2024 TN Standard Hourly Rates

Rates as reflected subject to review and adjustment on an annual basis.

Professional Engineer IV / Professional Architect IV / Senior Interior Designer IV	\$200
Professional Engineer III / Professional Architect III / Senior Interior Designer III	\$182
Professional Engineer II / Professional Architect II / Senior Interior Designer II	\$168
Professional Engineer I / Professional Architect I / Senior Interior Designer I	\$156
Graduate Engineer IV	\$158
Graduate Engineer III	\$150
Graduate Engineer II	\$145
Graduate Engineer I	\$135
Project Specialist II	\$165
Project Specialist I	\$135
Graduate Architect III / Landscape Architect III / Graduate Interior Designer III	\$145
Graduate Architect II / Landscape Architect II / Graduate Interior Designer II	\$128
Graduate Architect I / Landscape Architect I / Graduate Interior Designer I	\$118
Technician IV	\$153
Technician III	\$135
Technician II	\$120
Technician I	\$102
Engineering / Architectural Aide / Interior Design Aide	\$80
Professional Surveyor III	\$175
Professional Surveyor II	\$162
Professional Surveyor I	\$146
Graduate Surveyor	\$132
Surveyor III	\$135
Surveyor II	\$120
Surveyor I	\$105
Surveyor Aide	\$80
Planner IV	\$170
Planner III	\$153
Planner II	\$129
Planner I	\$110
Planner Aide	\$75
Graphic Designer	\$125
Administrative Support	\$95
Clerical Aide	\$80
Principal	\$235
Sr. Associate	\$215
Associate	\$205
2-Man Survey Crew w/Equipment	\$195
1-Man Survey Crew w/Equipment	\$145
Drone Crew	\$200

OHM Responses to City of Spring Hill
 Environmental Review Services
 1/30/2024

1. Proposed Pricing Structure

a. Format to be:

Task Description	Estimated/Projected Hours Per Project Approval	Hourly Rates Range	Net Average Rate	Total Estimated/Projected Fee Per Project to Approval
Flood Study Review	30*	\$150-\$182	\$160	\$4,800

*See response to item 6 for determination of hours.

2. Schedule to start (ie, immediately, 1-week, etc., upon receipt of notice to proceed)
 - a. Ready to start upon notice to proceed. OHM will require a week to review examples and City policies, meet with staff to discuss expectations, and determine workflow.
3. Onsite staff work session (meeting with staff to discuss the process and issues, etc.)
 - a. Available as needed
4. Program approach (ie pilot program of 6-months, joint review for 2-months, review of reviews provided for 2-months)
 - a. Request that Spring Hill provide OHM with recent example completed reviews. We will use that info to train OHM team. We propose OHM will do one joint review with City, then proceed with OHM only reviews from there.
5. Hourly Rate and Experience Table
 - a. See attached 2024 Standard Hourly Rates table. Experience table for typical involved team members below:

Position	Minimum Experience
Professional Engineer III	10+ years with PE license
Professional Engineer II	6 years with PE license
Graduate Engineer III	4 years

6. Any other information your team feels appropriate.

*Hours are based on flood study reviews of similar scope (such as the 2023 review of Wilkerson Place). After several reviews, OHM may become more efficient and expects to reduce hours per project. This time includes initial review and one follow-up review.

The hours provided are for review services only. Requests to perform independent flood studies will require more effort and will be discussed with the City on an as needed basis.

**SPRING HILL ENVIRONMENTAL ENGINEERING VENDOR SERVICES
AGREEMENT**

THIS SERVICES AGREEMENT (“Agreement”) is made by and between THE CITY OF SPRING HILL, TENNESSEE (the “City”) and OHM ADVISORS (“Vendor”) (collectively as “Parties”), and is entered into on February 5, 2024, and is effective as of the Effective Date set forth herein.

RECITALS:

WHEREAS, the City requires review assistance and desires to contract with a third-party independent contractor to provide said services; and

WHEREAS, the City has selected Vendor to provide the services it desires.

NOW, THEREFORE, in consideration of the foregoing facts and circumstances, the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the Parties, the Parties do hereby agree to the following:

1. **EFFECTIVE DATE.** The Effective Date of this Agreement shall be February 5, 2024.
2. **TERM.** The term of this Agreement shall be **36** months from the Effective Date herein through February 6, 2027.

If both parties agree to the existing terms and agreement, the contract can be renewed in writing executed by both parties for two (2) twelve (12) month options.

3. **INSURANCE.** Vendor shall maintain in full force and effect, during the entire term of this Agreement, commercial general liability, workers’ compensation and automobile insurance, in the minimum limits set forth below, naming City as an additional insured, and shall provide to the City certificates of insurance upon reasonable request.
 - a. Professional liability with a policy limit of not less than One Million Dollars (\$1,000,000), per claim;

- b. Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than Two Million Dollars (\$2,000,000), , per occurrence;
- c. Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000), combined single limit, per occurrence for bodily injury and property damage;
- d. Workers' compensation insurance as required by the State of Tennessee. The Provider agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, , employees, arising from work performed by Provider for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

4. **CITY OF SPRING HILL THIRD PARTY REVIEW POLICY STATEMENT.** The VENDOR shall agree to execute this contract in accordance with the approved City of Spring Hill Third Party Review Policy Statement. If a conflict arises between this contract and the policy, this contract will govern. The Vendor must obtain and maintain an active Professional Engineering licensure in the state of Tennessee to complete reviews. VENDOR shall perform services with that degree of care and skill ordinarily exercised by members of the same profession currently practicing at the same time and in the same or similar locality.

5. **VENDOR RESPONSIBILITIES.**

A. CHAIN OF CUSTODY OF DEVELOPMENT APPLICATIONS. The VENDOR (Third-Party Plan Review Agency) shall agree to exercise due diligence in the safekeeping of any documents received from the City and to promptly return them to the City when requested to do so, except for one set maintained by the VENDOR for record purposes. The drawings, specifications, electronic files in all types of media, and other materials received by the VENDOR in connection with the performance of any work under the Program may be protected by copyright law and shall remain the property of the rightful owner. Copies of plans utilized by the VENDOR shall be solely for the purpose of completing the VENDOR's work under the Program and not for any other purpose, in this or in any other project, and shall be returned to City upon completion of the project. The VENDOR agrees to treat such materials as restricted information.

B. ACCESS TO THE VENDOR. The VENDOR shall cooperate with the City in scheduling meetings and/or telephone conversations to provide updates and clarification of the results of its Third-Party Plan Reviews. The VENDOR shall provide complete Third-Party Plan Review comments to the City.

C. VENDOR CONFLICT OF INTEREST. It shall be the responsibility of the Vendor, to disclose any potential conflicts of interest that may arise at any time, between the VENDOR and the parties connected to the development application.

The VENDOR shall not begin the Plan Review of an application where it determines that there may be a conflict with the independence criteria specified by this contract. The VENDOR shall bring to the attention of the City for resolution, cases that require interpretation or clarification. The City may refer such cases to the City Attorney for advice. Disputes on matters of independence and conflict of interest shall be resolved by the City and the decision of the City shall be final.

D. DUE DILIGENCE. The VENDOR shall exercise due diligence in the discharge of the duties assigned to the VENDOR by law and regulation and shall refrain from any arbitrary or capricious action that

would unduly penalize or benefit the Applicant whose project is under Third-Party Plan Review.

E. CORRECTION OF NON-CODE COMPLIANT PLANS.

The Design Professional contracted by the property owner or applicant to design the project shall be responsible for correcting any non-code compliant plans, whether previously or subsequently discovered. Upon receipt of VENDOR's recommendation for approval, if the City discovers non-code compliant plans or documents, the City shall notify the VENDOR and the applicant that corrections must be made in the submitted plans.

Furthermore, the Third-Party review agency does not have the authority or power to waive any code requirements. Such duties and powers are the responsibility of the City as outlined in the currently enforced edition of the UDC. The Development Services Director has the authority to render interpretations of any applicable codes or adopt policies and procedures in order to clarify the application of code provisions to the project under review by the Third-Party review agency. Disputes regarding any code interpretations must be brought to the attention of the City. Code waivers or variances can only be issued by the City.

6. **CITY'S RESPONSIBILITIES.**

A. **OVERALL.** The City staff will coordinate the submittal process with the applicant and the **VENDOR** and will issue staff and **VENDOR** recommendations to the PC. Only City staff will provide approvals for construction and / or release of permits.

B. **SELECTION OF VENDOR.** The City will notify the applicant after submission of an application for review of the **VENDOR** assigned to conduct the Third-Party Plan Review. The **VENDOR** will be used for the entire specific disciplines reviewed for the application.

C. **EVALUATION OF VENDOR.** The **CITY** will monitor the performance of Third-Party Plan Review Agencies, including the Third-Party Plan Reviews conducted and the quality of comments and recommendation letters, in order to evaluate performance of the **VENDOR** and determine whether the **VENDOR** should be warned, suspended or removed from the Program.

7. **WORK FOR HIRE.** Any and all documentation, checklists, or specifications shall be considered work by hire and shall be owned by the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly agreed and understood that Vendor is an independent contractor and shall not represent itself, its agents or employees as agents or employees of the City. Nothing herein is to be construed as to create any employer-employee relationship between Vendor and the City; and neither Vendor nor any of its employees shall be deemed to be employees or agents of the City.
9. **AMENDMENT AND TERMINATION.** The term of this Agreement shall continue from the Effective Date until the termination of this Agreement as provided in this Agreement. Either party may terminate this Agreement, as applicable, for material breach by the other party of this Agreement, as applicable, which is not cured within 30 days from the receipt by the party in breach of a written notice from the other party specifying the breach in detail. CITY shall be liable for payment to Company for all Services rendered prior to the effective date of any such termination. Expiration or termination of this Agreement for any reason will not release either party from any liabilities or obligations set forth in this Agreement which (a) the parties have expressly agreed will survive any such expiration or termination or (b) remain to be performed or by their nature would be intended to be applicable following any such expiration and termination.

In addition, the City shall have the right to terminate the agreement with the VENDOR without prior notice and without cause upon thirty (30) calendar days. The individual or firm shall agree to cease all work under the agreement on or before the effective date of such notice.

10.NO CONFLICT OF INTEREST. No City official, employee or member of the governing body of the City shall be admitted to any share or part of this Agreement or to any benefit to arise from the same. Likewise, no officer, employee, or member of the governing body of Vendor or who exercises any function or responsibilities in connection with the carrying out of the project to which this Agreement pertains shall have any private interest, direct or indirect, in this Agreement.

the VENDOR and its employees performing services under this agreement (“Vendor Staff”) must comply with the independence and conflict of interest provisions set forth in this section. This means that the VENDOR cannot perform both Third-Party Plan Review services and submission of applications for review in the City of Spring Hill.

In addition, the VENDOR shall not be owned or controlled by the property owner or applicant of the development application or any person or entity responsible for the construction or management of the application, the design professionals of the applications or their firms, or any other party or entity associated with the property owner’s interest in the application. The VENDOR STAFF and PRs shall not have served or serve as an advisor or consultant to the property owner, the applicant or the design team in connection with application for which the VENDOR STAFF and PRs are providing Third-Party Plan Review. A person or a firm that has performed work as stated above shall not be eligible to serve as a VENDOR STAFF for any component or discipline on that application.

The VENDOR STAFF is considered to have a substantial business interest in an application if:

The VENDOR STAFF owns any voting shares of the applicants and /or property owner’s business.

The VENDOR STAFF received any of his/her gross income for the previous year from the applicant, except for income derived for services as a plan reviewer or similar consultations.

The VENDOR STAFF is an elected officer or a member of the board of directors or governing board of the applicants and /or property owner’s business.

The VENDOR STAFF fails to maintain an independent contractor relationship or becomes employed by the applicants and /or property owner's business.

Furthermore, a Third-Party reviewer involved in the review process shall not engage in the design, construction, or sale of those same developments because of approval of a development application.

A Third-Party reviewer involved in the review process, as well as his/her spouse and underage children cannot own stock or have any business interest in any owner, builder, or trade regulated under the applicable codes.

A Third-Party reviewer involved in the review process cannot participate in a review for an applicant and / or property owner for which they have had such business interest within the last 12 months.

11. ASSIGNMENT; SUBCONTRACTING. This agreement may not be assigned by either party without the prior written consent of the other party.

12. MODIFICATION. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of Vendor and the City.

13. NONDISCRIMINATION. Consistent with the City's policy and state and federal law that harassment and discrimination are unacceptable conduct, the Vendor agrees that harassment or discrimination directed toward a permit applicant, a City employee, or a citizen by the Vendor or Vendor's employee or subconsultant on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, sex, age, or sexual orientation will not be tolerated. The Vendor agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

14. EXECUTION IN COUNTERPARTS. This Agreement may not be amended, changed, modified, altered or terminated except by instrument in writing signed by the Parties. This Agreement may be executed in

several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

15. **TIME.** The Contractor shall finish within the agreed upon time frame as listed in the Third-Party Plan Review Policy Statement.
16. **FEE SCHEDULE.** The fee for services rendered is attached to this contract.
17. **VENUE AND JURISDICTION.** The venue and jurisdiction for any disputes arising pursuant to this Agreement shall be in the Circuit Court for Maury County, Tennessee.
18. **INDEMNITY.** Vendor shall indemnify and hold the City harmless from and against any and all liabilities, damages and costs to the extent caused by VENDOR's negligent acts, errors, or omissions, including attorney's fees..
19. **APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.
20. **FORCE MAJEURE.** The Parties shall not be liable to each other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond their respective reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, pandemics, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission by the parties, and unusually severe weather. The Parties agree to notify each other of the existence and nature of any delay.
21. **BINDING EFFECT.** This Agreement shall inure to the benefit of and shall be binding upon City and Vendor and their respective heirs, administrators, successors and assigns.
22. **SEVERABILITY.** In the event any provision of this Agreement or any instrument delivered in connection herewith shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall

not invalidate or render unenforceable any other provisions hereof or thereof.

23. **NOTICES.** All notices or other communications hereunder shall be deemed sufficiently given and shall be deemed given when delivered by hand-delivery or mailed by first class, postage prepaid, registered or certified mail and addressed as follows:

If to Vendor: _____

If to City: Mayor Jim Hagaman
199 Town Center Parkway
P.O. Box 789
Spring Hill, TN 37174

Copy to: Patrick M. Carter, Esq.
Middle Tennessee Law Group, PLLC
d/b/a Wolaver, Carter & Heffington
809 South Main Street, Suite 100
Columbia, TN 38401

City and Vendor may, by notice given hereunder, designate from time to time any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

24. **CAPTIONS.** The paragraph headings in this Agreement are for convenience only, and they form no part of this Agreement and shall not affect its interpretation.

25. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement between Vendor and the City and supersedes all prior negotiations, representations and agreements, either written or oral, unless otherwise expressly stated herein.
26. **PAYMENT OF EXPENSES; BREACH.** Each of the Parties to this Agreement shall pay his/her/its own expenses, costs and attorney's fees associated with the negotiation, preparation, execution and delivery of this Agreement and the documents related thereto and the consummation of the transactions contemplated herein. In the event of a breach in the performance of any of the provisions of this Agreement or any of the documents related thereto, the breaching party shall pay the reasonable attorney's fees and court costs of the non-breaching party associated with the enforcement of any of the provisions of any such document or this Agreement.
27. **COMPLIANCE WITH PUBLIC CHAPTER 775-TCA, TITLE 12, CHAPTER 4, PART 1.** In accordance with Tennessee Code Annotated, Title 12, Chapter 4, Part 1, the Contractor cannot be currently engaged in, and will not for the duration of the contract, engage in a boycott of Israel.
28. **OPEN RECORDS DISCLOSURE.** Any and all documents submitted to the City of Spring Hill that are associated with this project are subject to the Tennessee Public Records Act. Access to the record is governed by the Tennessee Public Records Act and the policies of the City of Spring Hill and the Office of Open Records Counsel.

IN WITNESS WHEREOF, Vendor and the City have caused their duly authorized representatives to execute and deliver this Agreement, all as of the day and year first written above.

CITY OF SPRING HILL, a Tennessee municipality

By: 
JIM HAGAMAN
Mayor of Spring Hill
Date of Execution: 2-5-2024

By: 
James Robert Dearman, PE (print)
VENDOR REPRESENTATIVE
Date of Execution: 2/5/2024