

CITY OF FRANKLIN, OHIO
RESOLUTION 2023-46

AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENT WITH THE WARREN COUNTY BUILDING DEPARTMENT FOR BUILDING CODE ENFORCEMENT SERVICES

WHEREAS, the City's Building Code provides:

1311.01 Composition; Compensation

1. The Division of Building and Zoning shall consist of a Chief Building Official, who shall be certified by the State and who shall be appointed by the City Manager, and such other employees as are appointed by the City Manager with the approval of the Chief Building Official;

WHEREAS, the City Manager desires to appoint the Warren County Building Department, upon the concurrence of this Council, as Chief Building Official to provide building permit processing and inspection scheduling, building inspection, plan review, and other Building Official services as delineated in the Professional Service Agreement attached as Exhibit A to this Resolution; and

WHEREAS, the City is authorized to enter into a Professional Service Agreement with Warren County pursuant to 5.04(j) of the City of Franklin Charter.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Franklin, Ohio, a majority of Council Members present concurring, that:

Section 1. Council hereby authorizes the City Manager to appoint the Warren County Building Department as Chief Building Official. The City Manager is further authorized to execute, on behalf of the City, a Professional Services Agreement with Warren County governing its appointment and duties as the Chief Building Official, in substantially the same form as the attached Exhibit A.

Section 2. Council hereby authorizes the City Manager to execute any other documentation, and take any other action, necessary to effectuate the intent of this Resolution.

Section 3. It is found that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in this formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code, and the Rules of Council.

Section 4. This Resolution shall become effective immediately upon its passage.

ADOPTED: July 24, 2023

ATTEST: Khristi Dunn
Khristi Dunn, Clerk of Council

APPROVED: Brent Centers
Brent Centers, Mayor

CERTIFICATE

I, the undersigned Clerk of Council for the Franklin City Council, do hereby certify that the foregoing is a true and correct copy of a resolution passed by that body on July 24, 2023.

Khristi Dunn
Khristi Dunn, Clerk of Council

**CITY OF FRANKLIN
PROFESSIONAL SERVICE AGREEMENT**

THIS AGREEMENT, is made by and between the **City of Franklin, Ohio**, hereinafter referred to as "City" and the **Warren County Board of County Commissioners**, hereinafter referred to as "the County," witnesses:

WHEREAS, the Franklin Building Department, the personnel of that department and persons and employees of individual firms, or corporations as described in section 3781.10 (E)(7) have been certified by the State of Ohio Board of Building Standards to exercise enforcement authority, to accept and approve plans and specifications, and to make inspections pursuant to sections 3781.10 (E)(1) and (E)(2) of the Ohio Revised Code; and

WHEREAS, the City desires to engage the services of the County to perform Services as defined in Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, the County is authorized to enter into this Professional Service Agreement with the City pursuant to section 307.15(A)(1) of the Ohio Revised Code; and

WHEREAS, the City is authorized to enter into this Professional Service Agreement with the County pursuant to 5.04(j) of the City of Franklin Charter; and

NOW, THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties mutually agree as follows:

1. **SCOPE OF SERVICES.** The County shall provide building permit processing and inspection scheduling, building inspection, plan review, and Building Official services as delineated in Exhibit A to this Agreement.
2. **TERM.** This Agreement shall remain in effect for a period of five (5) years after execution hereof, pursuant to the terms and conditions contained herein.
3. **COMPENSATION AND METHOD OF PAYMENT.** The City shall pay the County for services rendered in the amount of seventy-five percent (75%) of all building permit fees collected, as outlined in the City of Franklin Code of Ordinances, charged by Franklin (excluding the supplemental 1% or 3% fee paid directly to the Ohio Board of Building Standards). The City may waive all or part of the fees due by an application for a specific permit, but such action shall not relieve the City of the obligation to pay seventy five percent (75%) of the then published fee schedule to the County. Collection of the permit fees shall be the sole responsibility of the County.
4. **SUBCONTRACTING.** None of the work or services covered by this Agreement shall be subcontracted without the prior express written consent of the City. Any work or services subcontracted hereunder shall be specified by written contract and reviewed by the City before execution, which contract shall explicitly state that it is subject to each provision of this Agreement.
5. **ASSIGNABILITY.** The County shall not assign any interest in this Agreement, and shall not transfer any interest in the same, whether by assignment or novation, without prior express written consent of the City. In accordance with the above stipulation on assignments, this Agreement shall be binding upon and inure to the benefits of the heirs, successors, and assigns of the parties hereto.

6. **GOVERNING LAW.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio. All actions regarding this Agreement shall be filed and venued in a court of competent subject matter jurisdiction in Warren County, Ohio. The parties hereby consent to the jurisdiction and venue of such courts and waive any right to assert forum non conveniens.

7. **TERMINATION.**
 - A. **Termination for Cause.** If, through any cause, the County shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the County violates any of the covenants or agreements of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to the County specifying the effective date of the termination, at least ten (10) days before such effective date. In such event, all finished or unfinished documents, data, studies, and reports prepared by the County pursuant to Agreement shall be immediately delivered to the City as it is the City's property and the County shall be entitled to receive equitable compensation for any work satisfactorily completed. Regardless of the above, the County shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the County.

 - B. **Alternatives to Termination.** In the event the County fails to fulfill the terms and conditions of this Agreement in a timely and diligent manner, the City reserves the right, at its sole option, as an alternative to termination of the Agreement, to reduce the services required herein of the County, and reduce the project budget in a manner which reflects such a reduction, by giving notice of such in writing, stating the date such reduction will become effective.

 - C. **Termination for Convenience.** Both the City and County may terminate this Agreement at any time by giving at least ninety (90) days' notice in writing. If the Agreement is terminated as provided herein, the County shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the County covered by this Agreement, less payments of compensation previously made.

8. **COMPLIANCE WITH LAWS AND POLICIES.**
 - A. Whenever under this Agreement, City or County notices or amendments are required, they shall be effective only when given either (1) in writing and signed by the City Manager for the City of Franklin and signed by the Warren Board of County Commissioners.

 - B. The County hereby agrees to comply with Ohio Revised Code Section 153.59 regarding nondiscrimination. The County agrees not to discriminate against employees or applicants for employment by reason of race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth, and its operations within the City shall remain in compliance with all applicable Federal, state and local equal employment opportunity and nondiscrimination laws and regulations.

 - C. Both the County and City agree to comply with Ohio Revised Code Section 2921.42, governing the unlawful interest in a public contract, at all times, in carrying out the terms of this Agreement, as well as all other Ohio Ethics Laws (see generally Revised Code Chapter 102 et seq.).

9. LIABILITY.

- A.** All personnel or agents of the County shall, for the purposes of allocation of liability to third parties only, be deemed to be acting under the direction and control of the County and not under the direction and control of any other party to this Agreement, and their employer or principal shall assume the risk of any liability to third parties arising from the conduct, acts or omissions of such personnel or agents. In the event of any claim or action arising from any circumstances to which this Agreement applies, and whether or not a reservation of rights is made, the parties, as condition of this Agreement, shall give their full cooperation to any party defending such a claim or action.
- B.** Each party to this Agreement agrees to be liable, to the extent required by law, for the negligent acts or negligent omissions by or through itself, its employees and agents. Each party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or omissions, and nothing in this Agreement shall impute or transfer any such liability from one to the other.

10. EVALUATION, REPORTS, INFORMATION, AND AUDIT. The County agrees to participate fully in all evaluation activities initiated by the City. At such times and in such form the City may require, the County shall furnish the City such reports as may be requested pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement. The County shall retain all financial and administrative records for a minimum of three years following completion of the Agreement and shall permit the City or any of its representatives or auditors access to such records. The City shall be provided copies of all such records immediately upon request at any time during the lifetime of this Agreement through the three years following the completion of the Agreement.

11. INSURANCE. As evidence of the County's ability to be responsible for its allocation of risks stated herein, the County warrants it is self-insured, for Worker's Compensation, and further, for purposes of public liability insurance the County is self-insured, but is a member of a risk shared pool coverage, namely County Risk Sharing Authority (C.O.R.S.A.) whose contact information is: 209 E. State Street Columbus, Ohio 43215, Telephone: 1-866-455-8039 and webpage: <http://www.ccao.org>, the coverage and policy of limits of which being identified in the attached Memorandum of Coverage (2013-2014). The County further warrants it will notify the City in accordance with the notice requirements set forth in paragraph 11 herein of any changes in its worker's compensation or public liability coverage no less than ten days before such change or cancellation. If the County elects to subcontract any of its duties and responsibilities under this agreement, the County shall notify the City in accordance with the notice requirements set forth in paragraph 11 herein, no less than ten days before use of any subcontractor, and any such subcontractor shall maintain worker's compensation insurance and professional liability insurance, the minimum coverage of which must be at least one million dollars in general liability coverage. Any subcontractor must name the County and City as an additional named insured. All subcontractors must provide a certificate of insurance, executed by the insuring company or its authorized agent, to the County and the City indicating the types and amount of coverage, and naming the insured parties including the County and City as additional named insureds, before the subcontractor is to begin performing services.

As evidence of the City's ability to be responsible for its allocation of risks stated herein, the City warrants it is insured as follows: Argonaut Comprehensive Coverage Policy. Evidence of coverage is attached hereto.

- 12. NOTICE.** All notices hereunder shall be in writing and shall be served by certified mail, return receipt requested and addressed as follows:

If to City of Franklin: City Manager
City of Franklin
1 Benjamin Franklin Way
Franklin, OH 45005

If to Warren County: Warren County Commissioners
406 Justice Drive
Lebanon, Ohio 45036

- 13. SEVERABILITY.** In the event that any provision of this Agreement is declared or determined to be unlawful, invalid or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions and each provision of the Agreement will be and is deemed to be separate and severable from each other provision.

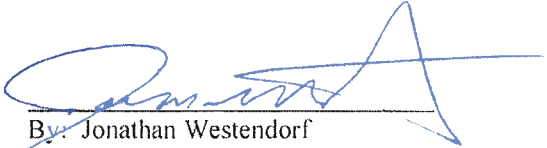
14. MISCELLANEOUS.

- A.** This Agreement represents the entire and integrated agreement of the parties, and supersedes all prior negotiations, representations, and/or agreements, written or oral.
- B.** This Agreement may only be modified or amended by a written agreement between the parties and may be terminated only upon the written agreement of the parties.
- C.** This Agreement, and all rights and obligations of the parties hereunder, shall be construed and governed by the laws of the State of Ohio.
- D.** The parties acknowledge that the County is an independent contractor providing services to the City, and no provision of this Agreement is intended to create or shall be construed to create any employment relationship, partnership, joint venture, or agency relationship between the City and the County.
- E.** The headings of the various sections of this Agreement are inserted for convenience only and do not, expressly or by implication, limit, define, or extend the specific terms of the sections so designated.
- F.** The waiver by either party of a breach or a violation of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of any term or condition hereto. No waiver shall be effective against any party hereto unless in a writing signed by that party.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement shall be deemed effective as of the date of the last party's signature below.

CITY OF FRANKLIN, OHIO


By: Jonathan Westendorf
City of Franklin City Manager

Date: 7/27/2023

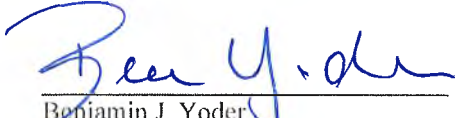
**WARREN COUNTY BOARD OF
COUNTY COMMISSIONERS**

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM:


Benjamin J. Yoder
City of Franklin Law Director

APPROVED AS TO FORM:

David P. Fornshell
Warren County Prosecutor

EXHIBIT A

1. The City agrees that the County shall exercise enforcement authority for inspections and make inspections on behalf of the City and shall review plans and specification. Such authority conveyed to County by this agreement shall be no more than the authority conveyed to Franklin, Ohio by its Building Codes and by the Ohio Revised Code Sections 3781.10 (E) (1) and (E) (2).
2. The County agrees to exercise enforcement authority for inspections and plan review within the City and to make inspections and plan review on behalf of the City. No waiver of code requirements shall be issued by the County. Inspections shall be performed on a regular basis during normal business hours, except for inspections that must be performed during hours of darkness or during commercial "shutdown" conditions. Plan review shall routinely be performed within 72 hours of receipt of plans, for 1, 2, and 3 family dwellings. Plans to be reviewed under the requirements of the Ohio Building Code will routinely be reviewed within 3 to 10 business days from receipt of plans. Failure to render services in compliance with the Ohio Building Code will result in non-payment to the County. Plans are to be submitted to the Warren County Building Department's Office at its address as identified above.
3. The County agrees that inspectors will be available by telephone to respond to citizen queries between 7:00am and 5:00pm, on days when the County is normally open for business. All inspectors and plan reviewers will maintain the relevant state certification as required by law.
4. The City has established a statutory building permit fee schedule which is enumerated in the City's Codified Ordinances, which may be changed from time to time at the discretion of the City. The County agrees to submit any dispute regarding the Franklin building code to the duly appointed Appeals Board for final decision and to accept such decision.
5. The County agrees to furnish the following specific services to the City:
 - G. Examine plans and specifications for proposed work, as required by the Franklin Building Code, the Ohio Residential Code and the Ohio Building Code. Such examination and plan approval pertains only in general to technical and energy code compliance. Any part which may be in violation will not be considered as being approved. Site plan and related zoning permit fees shall be reviewed and retained by Franklin. The County will not knowingly issue any building permit until a zoning certificate has been approved.
 - H. The County shall process all building permits and appropriate fees at their location. The County shall reimburse the City on a monthly basis 25% of all the fees collected during the preceding month.
 - I. Upon request, advise applications on Code requirements, but shall not perform design services for the completion of inadequate applications.
 - J. Perform job inspections of all work described on the application and plans, including the installation of equipment. Such service shall be provided promptly in the order received or scheduled without regard to type or extent of work, but within normal scheduling.
 - F. Upon request of the Franklin Law Director, make itself reasonably available for and shall testify in any judicial proceeding or any formal or informal dispute resolution proceeding involving issues arising from the performance of the services herein described. After the first appearance on a specific case, County shall be paid \$100.00 per hour for the time any of its employees or principals shall take to fulfill the requirement as set forth in this section.

F. Provide emergency inspections after normal working hours at a rate of \$50 per hour for residential and \$100 per hour for commercial inspections.

G. All documents, including applications, plan review, job progress reports and inspection reports shall remain property of the City.

H. Serve as the Building Official for the City. Responsibilities will include pre-permit submittal reviews and project evaluations for proposed projects as requested by the City.