

BOARD OF PUBLIC WORKS AND SAFETY
Agenda Request Form

(Form B-01-2012)

Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard. Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.

Date Submitted:	08.31.23	Meeting Date:	09.05.23
Contact Information:			
Requested by:	Mayor Steve Barnett		
On Behalf of Organization or Individual:	City of Franklin		
Telephone:	317.736.3602		
Email address:	sbarnett@franklin.in.gov		
Mailing Address:	70 E. Monroe St. Franklin, IN 46131		
Describe Request:			
Introduction of Consulting Agreement with The Masters' Group for study on cable pollution			
List Supporting Documentation Provided:			
Who will present the request?			
Name:	Mayor Steve Barnett	Telephone:	317.736.3602

In order for an individual and/or agency to be considered for new business on the Board of Works agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 4:00 p.m. on the Wednesday before the meeting.

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (the "Agreement") is dated this ____ day of _____, ____.

<p>City of Franklin</p> <p>70 E. Monroe St. Franklin, IN 46131</p> <p>(the "Client")</p>	<p>Masters Elite Group</p> <p>dba</p> <p>The Masters' Group</p> <p>6412 State Road 144, Greenwood, IN 46143</p> <p>("Consultant")</p>
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BACKGROUND

- A. The Client is of the opinion that the Consultant has the necessary qualifications, experience and abilities to provide consulting services to the Client.
- B. The Consultant is agreeable to providing such consulting services to the Client on the terms and conditions set out in this Agreement.

IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Client and the Consultant (individually the "Party" and collectively the "Parties" to this Agreement) agree as follows:

SERVICES PROVIDED

1. The Client hereby agrees to engage the Consultant to provide the Client with the following consulting services (the "Services"):
 - Telecommunication consulting including but not limited to the auditing of future and existing aerial and underground facilities located within the boundaries of the City of Franklin. Management of communication between existing and future telecommunication service providers within the City boundaries of Franklin.
 - "Consultant" will manage and maintain all records pertaining to the audit, and will work with telecommunication service providers to resolve issues found in the City of Franklin with documented responsiveness.
 - "Consultant" will monitor all permits pulled by telecommunication service providers and visit each site to ensure field teams and/or contractors hired by the telecommunication services are following all OSHA, state, federal and local worksite safety guidelines.
 - "Consultant" will inspect work area (construction area) upon completion of work by the telecommunication's field team and/or construction company to ensure they have met all the guidelines set forth for them to work within the City of Franklin and report any and all findings to the City of Franklin.
 - "Consultant" will notify the telecommunication service provider of any and all violations and send out written notice to the company.
 - "Consultant" will keep updated records of primary contacts for all telecommunication service providers.

- "Consultant" will assist in updating city ordinances pertaining to the littering and waste left behind by telecommunication service provider field workers and contractors.
- "Consultant will assist in writing and updating any existing and new practices, policies, ordinances and regulations at a local and state level.
- "Consultant" will assist the "Client with any additional services needed within the capability of the "Consultant's" agency.

TERM OF AGREEMENT

2. The Services will also include any other consulting tasks which the Parties may agree on. The Consultant hereby agrees to provide such Services to the Client.
3. The term of this Agreement (the "Term") will begin on the date of this Agreement and will remain in full force and effect indefinitely until terminated as provided in this Agreement.
4. In the event that either Party wishes to terminate this Agreement, that Party will be required to provide 10 days' written notice to the other Party. If City terminates this Agreement, any work in progress shall be paid in accordance with the terms of this Agreement. No further payment shall be made or owed by City after notice of termination.
5. In the event that either Party breaches a material provision under this Agreement, the non-defaulting Party may terminate this Agreement immediately and require the defaulting Party to indemnify the non-defaulting Party against all reasonable damages.
6. This Agreement may be terminated at any time by mutual agreement of the Parties.
7. Except as otherwise provided in this Agreement, the obligations of the Consultant will end upon the termination of this Agreement.
- 8.

PERFORMANCE

9. The Parties agree to do everything necessary to ensure that the terms of this Agreement take effect.

CURRENCY

10. Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in USD (US Dollars).

COMPENSATION

11. The Consultant will charge the Client for the services provided herein at the agreed upon rate of fifty dollars (\$50.00) per hour not to exceed an annual rate of sixty thousand dollars (\$60,000.00) per year inclusive of all expenses. The \$60,000.00 maximum annual payment lots for up to one thousand two

hundred (1,200) man hours for the requested projects and the Client shall pay for actual hours performed expenses incurred not to exceed sixty thousand dollars (\$60,000.00). If additional services and hours are needed to complete any requests tasks by the Client beyond this agreed upon amount, a written agreement must be signed between both parties approving additional "compensation". The "not to exceed" annual rate and hourly compensation shall be reviewed one (1) year form the date the agreement is signed and if the parties fail to mutually agree upon a rate, this agreement shall be terminated.

12. The Client will be invoiced semi-monthly on the 1st of each month.
13. Invoices submitted by the Consultant to the Client are due wwithin (30) thirty days from the time the client receives invoice in the form of an ACH payment or check payable to the "Consultant" representative identified as Natasha Mershon - Company CEO.
14. The Consultant will not be reimbursed for any expenses incurred in connection with providing the Services of this Agreement.

CONFIDENTIALITY

15. Confidential information (the "Confidential Information") refers to any data or information relating to the Client, whether business or personal, which would reasonably be considered to be private or proprietary to the Client and that is not generally known and where the release of that Confidential Information could reasonably be expected to cause harm to the Client.
16. The Consultant agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which the Consultant has obtained, except as authorized by the Client or as required by law. The obligations of confidentiality will apply during the Term and will survive indefinitely upon termination of this Agreement.
17. All written and oral information and material disclosed or provided by the Client to the Consultant under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to the Consultant.

OWNERSHIP OF INTELLECTUAL PROPERTY

18. All intellectual property and related material, including any trade secrets, moral rights, goodwill, relevant registrations or applications for registration, and rights in any patent, copyright, trademark, trade dress, industrial design and trade name (the "Intellectual Property") that is developed or produced under this Agreement, is a "work made for hire" and will be the sole property of the Client. The use of the Intellectual Property by the Client will not be restricted in any manner.

19. The Consultant may not use the Intellectual Property for any purpose other than that contracted for in this Agreement except with the written consent of the Client. The Consultant will be responsible for any and all damages resulting from the unauthorized use of the Intellectual Property.

RETURN OF PROPERTY

20. Upon the expiration or termination of this Agreement, the Consultant will return to the Client any property, documentation, records, or Confidential Information which is the property of the Client.

CAPACITY//INDEPENDENT CONTRACTOR

21. In providing the Services under this Agreement it is expressly agreed that the Consultant is acting as an independent contractor and not as an employee. The Consultant and the Client acknowledge that this Agreement does not create a partnership or joint venture between them, and is exclusively a contract for service. The Client is not required to pay, or make any contributions to, any social security, local, state or federal tax, unemployment compensation, workers' compensation, insurance premium, profit-sharing, pension or any other employee benefit for the Consultant during the Term. The Consultant is responsible for paying, and complying with reporting requirements for, all local, state and federal taxes related to payments made to the Consultant under this Agreement.

RIGHT OF SUBSTITUTION

22. Except as otherwise provided in this Agreement, the Consultant may, at the Consultant's absolute discretion, engage a third-party subcontractor to perform some or all of the obligations of the Consultant under this Agreement and the Client will not hire or engage any third parties to assist with the provision of the Services.

23. In the event that the Consultant hires a subcontractor:

- the Consultant will pay the sub-contractor for its services and the Compensation will remain payable by the Client to the Consultant.
- for the purposes of the indemnification clause of this Agreement, the sub-contractor is an agent of the Consultant.

AUTONOMY

24. Except as otherwise provided in this Agreement, the Consultant will have full control over working time, methods, and decision making in relation to provision of the Services in accordance with the Agreement. The Consultant will work autonomously and not at the direction of the

Client. However, the Consultant will be responsive to the reasonable needs and concerns of the Client.

EQUIPMENT

25. Except as otherwise provided in this Agreement, the Consultant will provide at the Consultant's own expense, any and all equipment, software, materials and any other supplies necessary to deliver the Services in accordance with the Agreement.

NO EXCLUSIVITY

26. The Parties acknowledge that this Agreement is non-exclusive and that either Party will be free, during and after the Term, to engage or contract with third parties for the provision of services similar to the Services.

NOTICE

27. All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties at the following addresses:

- City of Franklin c/o Tara Payne
70 E. Monroe Sr. Franklin, IN 46131
- Masters Elite Group dba The Masters Group
P.O Box 163. Bargersville, IN 46106

28. or to such other address as either Party may from time to time notify the other, and will be deemed to be properly delivered (a) immediately upon being served personally, (b) two days after being deposited with the postal service if served by registered mail, or (c) the following day after being deposited with an overnight courier.

INDEMNIFICATION

29. Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with this Agreement. This indemnification will survive the termination of this Agreement.

MODIFICATION OF AGREEMENT

30. Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

TIME OF THE ESSENCE

31. Time is of the essence in this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

ASSIGNMENT

32. The Consultant will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Client.

ENTIRE AGREEMENT

33. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

ENUREMENT

34. This Agreement will ensure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators and permitted successors and assigns.

TITLES/HEADINGS

35. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

GENDER

36. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

GOVERNING LAW

37. This Agreement will be governed by and construed in accordance with the laws of the State of Indiana.

SEVERABILITY

38. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with

the invalid or unenforceable parts severed from the remainder of this Agreement.

WAIVER

39. The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

IN WITNESS WHEREOF the Parties have duly affixed their signatures under hand and seal on this _____ day of _____, _____.

Fiberhawk / Swayzee Communications

City of Franklin, Indiana

Per: _____ (Seal)

Officer's Name: _____

Natasha Mershon dba The Masters Group Inc

Per: _____ (Seal)

Officer's Name: Natasha Mershon – CEO