

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

A RESOLUTION authorizing the County Executive to execute a Consulting Agreement with Shockey Consulting, Inc., of Lenexa, Kansas, to provide consulting services to the Jackson County Stormwater Commission, at a cost to the County not to exceed \$35,000.00.

RESOLUTION #16863, March 23, 2009

INTRODUCED BY Bob Spence, County Legislator

WHEREAS, the Jackson County Stormwater Commission has a need for consulting services to provide planning and development support, to identify stormwater projects, and to locate and make application for funding sources; and,

WHEREAS, Shockey Consulting, Inc., is qualified to and will perform these consulting services; now therefore,

BE IT RESOLVED by the County Legislature of Jackson County, Missouri, that the County Executive be and hereby is authorized to execute for the County the attached Consulting Agreement with Shockey Consulting, Inc., of Lenexa, Kansas, at a cost to the County not to exceed \$35,000.00; and,

BE IT FURTHER RESOLVED that the Director of Finance and Purchasing be and hereby is authorized to make all payments, including final payment on the contract.

Effective Date: This Resolution shall be effective immediately upon its passage by a majority of the Legislature.

APPROVED AS TO FORM:

Jay D. Holder
Chief Deputy County Counselor

Mary Jo Spino
County Counselor

Certificate of Passage

I hereby certify that the attached resolution, Resolution #16863 of March 23, 2009, was duly passed on March 23, 2009 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 9

Nays 0

Abstaining 0

Absent 0

3.26.09
Date

Mary Jo Spino
Mary Jo Spino, Clerk of Legislature

There is a balance otherwise unencumbered to the credit of the appropriation to which the expenditure is chargeable and there is a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made each sufficient to provide for the obligation herein authorized.

ACCOUNT NUMBER: 004 1504 58051
ACCOUNT TITLE: Special Road & Bridge Fund
Public Works Development
Stormwater Projects
NOT TO EXCEED: \$35,000.00

3/18/09
Date

[Signature]
Director of Finance and Purchasing

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT, made and entered into this 1 day of May 2009
by and between the County of Jackson, Missouri hereinafter referred to as "County" and
Shockey Consulting Services, LLC, 7611 Park Street, Lenexa, Kansas 66216. (913)
248-9585, (913) 248-9581 fax, hereinafter referred to as "Consultant."

WITNESSETH:

WHEREAS, County requires the services of Consultant in connection with the following project: Jackson County Stormwater Commission Plan Development Support; and,

WHEREAS, County desires to enter into an Agreement with Consultant to perform Consulting services as aforementioned; and,

WHEREAS, Consultant represents that the firm is equipped, competent, and able to undertake such an assignment;

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein contained, IT IS HEREBY AGREED by the parties hereto as follows:

ARTICLE I – SCOPE OF SERVICE TO BE PROVIDED BY THE CONSULTANT:

Consultant, upon receipt of written notice from the County that this Agreement has been approved, will furnish the necessary services as stipulated in the attached proposal from the Consultant in Exhibit A, attached, dated 2/16/09.

ARTICLE II - ADDITIONAL SERVICES:

The County reserves the right to request additional work, based on changed or unforeseen conditions which require changes and work beyond the scope of this Agreement. In this event, an Addendum to this Agreement shall be executed prior to performing the additional changed work or incurring any additional cost therefor. Any change in compensation will be covered in the Addendum.

ARTICLE III - SCOPE OF SERVICES TO BE PROVIDED BY THE COUNTY:

The County agrees to furnish information and have work done without cost to the Consultant as follows:

1. Make available to the Consultant existing records, maps, plans, and other data possessed by County when such are necessary, advisable or helpful to the Consultant in the completion of his work under this Agreement. The County

FILED
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ame

MARY JO SPINO
COUNTY CLERK

shall furnish a copy of property ownership information from County tax records.

2. Provide all necessary title work, deeds, plats, etc. as required for the completion of the project and the preparation of the right-of-way and easement plans and descriptions.
3. Provide Standard County forms and/or standard plans as required including contractual sections for bid document.
4. Pay publishing costs for advertisements of notices, public hearings, request for bids, and other similar items. Pay for all permits and licenses that may be required by local, state or federal authorities. Secure the necessary land, easements and right-of-way required for the project.
5. Designate a representative who will serve as their primary point of contact and who will be authorized to act for and on behalf of the County throughout completion of the services covered by this Agreement.
6. Examine all studies and drafts developed by the Consultant, obtain reviews by other agencies involved and render decisions thereon in a prompt manner so as not to delay the Consultant.

ARTICLE IV - PERIOD OF SERVICE:

The Consultant will commence work within two (2) weeks after receiving Notice to Proceed from the County. The service duration is assumed to be through December 31, 2010, unless terminated sooner.

ARTICLE V - PROGRESS SCHEDULE:

The contracting parties agree that time is of the essence. Each month the Consultant shall submit a Progress Report to the County. The Progress Report will be in the form of either a bar graph or a Critical Path Method (CPM) Schedule. It shall include scheduled periods for each of the elements into which the Consultant's work is divided. Each work element shall be assigned a percentage of the total work upon which progress can be computed for interim payments. The total percentage completed shall be shown. The schedule periods shall also include a time allowance for review and approvals by the County. (Assume three (3) weeks review time for County on each submittal).

ARTICLE VI - COVENANT AGAINST CONTINGENT FEES:

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement the price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee plus reasonable attorney's fees.

ARTICLE VII - SUBLETTING ASSIGNMENT:

No portion of the work covered by this Agreement, except as provided herein, shall be sublet or transferred without the written consent of the County. The subletting of the work shall in no way relieve the Consultant of its primary responsibility for the quality and performance of the work.

ARTICLE VIII – PROFESSIONAL ENDORSEMENT:

All plans, specifications and other documents shall be endorsed by the Consultant and shall reflect the name and seal of the Professional Consultant endorsing the work.

ARTICLE IX - STANDARD OF CARE

Consultant warrants that it shall perform the services in accordance with the standards of care and diligence normally practiced by recognized Consulting firms in performing services of a similar nature. If, during the two year period following the earlier of completion or termination of the Services under the applicable Request for Service it is shown there is an error in the Services caused by the Consultant's failure to meet such standards, and County has promptly notified Consultant of any such error within that period, Consultant shall perform, at Consultant's cost, such corrective Consulting services as may be necessary to remedy such error.

ARTICLE X - - MISCELLANEOUS PROVISIONS:

The following miscellaneous provisions are agreed to by both parties to this Agreement.

1. Inspection of Documents.

The Consultant shall maintain all records, survey notes, design documents, cost and accounting records, construction records and other records pertaining to this Agreement and to the project covered by this Agreement, for a period of not less than three (3) years following final payment. An authorized representative of the County shall have access to the records for inspection, during regular working hours at the Consultant's place of business. County shall have the right to audit and inspect Consultant's records and accounts covering costs hereunder at all reasonable times during the performance of the Services and for a period of three (3) years after the acceptance thereof. Consultant shall not be required to keep records of or provide access to those of its costs expressed as fixed rates, a lump sum, or of costs which are expressed in terms of percentages of other costs.

2. Conferences, Visits to Site, Inspection of Work.

A representative of the County shall have the privilege of inspecting and reviewing the work being done by the Consultant and consulting with its staff at any time. Conferences are to be held at the request of the County or the Consultant.

3. Accuracy of Work. The Consultant shall be responsible for the accuracy of the work and shall promptly make necessary revisions or corrections resulting from errors and omissions on the part of the Consultant without additional compensation. Acceptance of the work by the County will not relieve the Consultant of the responsibility for subsequent correction of any such errors and the clarification of any ambiguities during construction. The Consultant shall give immediate attention to these revisions or corrections so there will be a minimum of delay to the project or to the contractor.
4. Relationship with Others. The Consultant shall cooperate fully with Consultants on adjacent projects, municipalities, local government officials, public utility companies, and others as may be directed by the County. This shall include attendance at meetings, discussions and hearings, as may be requested by the County; furnishing plans and other data as may be requested from time to time by the County, and compliance with all directives issued by the County.
5. Ownership of Documents. Plans, electronic data, and maps and specifications prepared under this Agreement shall be delivered to and become the property of the County upon termination or completion of work. Basic survey notes, design computations and other data prepared under this Agreement shall be made available to the County upon request. All such information produced under this Agreement shall be available for use by the County without restriction or limitation on its use. If the County incorporates any portion of the work into a project other than that for which it was performed, the County shall save the Consultant harmless from any claims and liabilities resulting from such use.
6. Termination. Consultant or the County may terminate this Agreement by giving written notice to the other party. Termination of this Agreement shall not constitute a waiver of the rights or obligations which County or Consultant may be entitled to receive or be obligated to perform under this Agreement. Should this Agreement terminate, all books, brochures, flier, lists, and all other County materials must be delivered and returned by the Consultant to the County within 15 calendar days of the demand of the County.

If the Agreement is terminated due to the Consultant's service being unsatisfactory in the judgment of the County, or if the Consultant fails to prosecute the work with due diligence, the County may procure completion of the work in such manner as it deems to be in the best interest of the County. The Consultant will be responsible for any excess cost in addition to that provided for in this agreement or any damages the County may sustain by reason of the termination of this Agreement due to unsatisfactory performance or prosecution.

7. Successors and Assigns. The County and the Consultant each bind themselves, their successors, executors, administrators, and assigns to the other party to this Agreement, and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement.

8. Responsibility for Claims and Liability. The Consultant shall be responsible for any and all damage to property or persons while performing work under this agreement, and shall indemnify and save harmless the County, its officers, agents, and employees from all suits, claims, actions, or damages of any nature whatsoever resulting from the negligence of the Consultant in the performance of work under this Agreement.

9. Compliance with Laws. The Consultant shall keep itself fully informed of all existing and current regulations of the County, State, and Federal laws which in any way limit or control the actions or operations of those engaged upon the work, or affecting the materials supplied to or by them. It shall at all times observe and comply with all ordinance, laws, and regulations, and shall protect and indemnify the County against any claims or liability arising from or based on any violations of the same. This Agreement shall be governed by and interpreted in accordance with the laws of Missouri excluding provisions thereof which would apply the laws of another jurisdiction.

The Consultant's attention is directed to Chapter 296, Section 296.010, to Section 296.070, inclusive RSMo 2000, as amended, "Discriminatory Employment Practices," and to Section 644.4, Jackson County Code, 1984, which provides as follows:

644.4 Subcontractors, Agreements with Contractors

The contractor will require that all contracts between it and subcontractors shall contain the following provisions.

a. Not Discriminate

The subcontractor shall not discriminate against any qualified person because of her or his race, color, national origin, religion, age, sex or handicap in recruitment and recruitment advertising, employment, upgrading, promotion, demotion or transfer, lay-off or termination, rates of pay or other forms of compensation, other terms of conditions of employment and selection for training including apprenticeship.

b. Inspection by County Contract Review Officer (CRO)

The subcontractor will permit, on reasonable notice and at reasonable times, the CRO to visit its premises, inspect and copy thereon its business records, survey its work forces and interview its employees, as may be necessary to verify compliance with this chapter and implementation of the affirmative action plan of the Subcontractor. The subcontractor further agrees to furnish such future information as may be reasonably required of it within ten (10) working day of the date it is requested in writing by the CRO.

10. Nondiscrimination. The Consultant, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors. The Consultant will comply with Title VI of the Civil Rights Act of 1964, as amended. More specifically, the Consultant will comply with the regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation, as contained in 49 CFR 21 through Appendix H and 23 CFR 710.405(b), which are herein incorporated by reference and made a part of this agreement. In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified of the Consultant's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of color, race or national origin.
11. Independent Contractor. The Consultant shall work as an independent contractor and not as an employee of the County. The Consultant shall be subject to the direction of the County only as to the result to be accomplished and not as to the means and methods for accomplishing the result. The Consultant shall report all earnings received hereunder as gross income, and be responsible for its own Federal, State, and City withholding taxes and all other taxes, and operate its business independent of the business of the County except as required by this Agreement.
12. Severability. If any covenant or other provision of this Agreement is invalid, or incapable of being enforced, by reasons of any rule of law or public policy, all other conditions and provision of this Agreement shall nevertheless remain in full force and effect and no covenant or provision shall be deemed dependent upon any other covenant or provision unless as expressed herein.
13. Incorporation. This Agreement along with the Consultant's attached proposal and fee breakdown, incorporates the entire understanding and agreement of the parties.
14. Time of Essence. Timely performance of all duties provided herein is the essence of this Agreement.
15. Decisions Under this Agreement. The County will determine the acceptability of work performed under this Agreement, and will decide all questions which may arise concerning the project. The County's decision shall be final and conclusive.
16. Breach of Contract. The prevailing party, in whole or in part, shall be entitled to reimbursement for all costs and reasonable attorneys' fees in any legal action brought against the other party based on a breach of this Agreement.

17. Safety Requirements. Consultant shall make every reasonable effort to perform the Services in a manner complying with all applicable safety legislation and with applicable environmental laws, rules, and regulation in force at the time of development of designs. Consultant shall also be responsible for the safety of its own employees at all times during the performance of any Request for Services.
18. Purchase Orders. In the event the County uses a purchase order form to administer this Agreement, the use of such form shall be for convenience purposes only and any typed provision in conflict with the terms of this Agreement and all-preprinted terms and conditions contained in or on such forms shall be deemed stricken and null and void.

ARTICLE XI - INSURANCE AND INDEMNIFICATION:

INSURANCE

INSURANCE: Consultant Firm shall purchase and maintain insurance coverages as stated as follows:

PROFESSIONAL LIABILITY: The Consultant Firm shall secure Professional Liability insurance coverage with limits of \$1,000,000 each claim/\$1,000,000 aggregate.

The County understands that we cannot be named insured on this coverage and that it is available only in a "claims made" form.

INSURANCE

Consultant shall procure and maintain in effect throughout the duration of the contract insurance coverages not less that the types and amounts specified in this section. If due to the nature of goods and/or services provided by the contractor are such that they may be excluded from coverage listed below, an addendum shall be made to the contract requesting coverage and limits required (Professional Liability, Work on bodies of water, Garage or tow services, Liquor liability are some examples).

All subcontractors of the contractor are required to carry the same coverages and limits as the contractor. All Liability policies required are to be written on an "occurrence" basis unless an agreement, in writing is made with Jackson County.

2. COMMERCIAL GENERAL LIABILITY

Commercial General Liability Insurance: with limits of not less than \$1,000,000 per occurrence and \$2,000,000 Annual Aggregate (both General and Products-Completed Operations). Aggregate shall be on a "per project" basis where more than one project is to be performed by the contractor under this contract. Policy shall include Severability of Interests coverage applying to Additional Insured and also include Contractual Liability with no limitation endorsements. Policy shall include \$100,000 limit each occurrence for

Damage Rented Premises, \$1,000,000 limit each occurrence for Personal & Advertising injury liability, \$5,000 Medial Expenses (any one person), and Employee Benefits Liability coverage with a \$1,000,000 limit.

2. COMMERCIAL AUTOMOBILE LIABILITY

Commercial Automobile Liability Insurance: with a limit not less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage Limit (each accident), covering owned, hired, borrowed, and non owned vehicles. Coverage shall be provided on "an auto" basis and be on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operations of motor vehicles in connection with this contract.

3. WORKERS COMPENSATION AND EMPLOYERS LIABILITY COVERAGE

Contractor shall provide coverage for Workers Compensation and Employers Liability for all claims by employees of the contractor or by anyone for whose acts it may be liable under the statutes of the State of Missouri with limits of:

- Workers compensations Statutory
- Employers Liability \$500,000 each accident
\$500,000 Disease-each employee
\$500,000 disease-Policy limit

4. EXCESS/UMBRELLA LIABILITY COVERAGE

Contractor shall provide Excess/Umbrella liability, on an occurrence basis, with \$10,000 Retention, to provide coverage limits over all liability coverages, listed above, at a limit not less than \$1,000,000 each occurrence and \$1,000,000 Aggregate.

5. ADDITIONAL INSURED & CERTIFICATE OF INSURANCE

The Commercial General and Automobile Liability Insurance specified above shall provide that Jackson County Missouri and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insured for the services performed under this contract.

A Certificate of Insurance shall be filed with the County's Director of Purchasing within 10 calendar days of the date when requested or before commencement of the work that are acceptable to the Director that the insurance requirements (a sample of an acceptable Certificate is attached) have been satisfied. The Certificate shall contain a provision that the policies may not be cancelled by the insurance carrier without 30 days written notice of cancellation, 10 days for non-payment of premium, to Jackson County. In the case of multi-year, renewable, or extended term on the contract; Contractor must supply the Director with current Certificate(s) on any coverages mentioned above with Thirty (30)

days prior to the expiration date of coverage(s). The Director of Purchasing may request copies of the Contractor's insurance policies for verification of coverages.

6. QUALIFICATIONS INSURANCE CARRIERS

All insurance coverage must be written by companies that have an A.M. Best's rating of "B+V" or better or Lloyd's of London, and are licensed and approved by the State of Missouri to do business in Missouri.

7. FAILURE TO MAINTAIN INSURANCE COVERAGE

Regardless of any approval by Jackson County, it is the responsibility of the contractor to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of Contractor's failure to maintain the required insurance in effect, Jackson County may order Contractor to stop work immediately and, upon 10 days notice and an opportunity to cure, may pursue its remedies for breach of this contract as provided for herein and by law.

FILING OF CERTIFICATES OF INSURANCE AND POLICIES WITH THE COUNTY

The Consultant shall file with the County upon request a copy of all policies of insurance required under the Agreement.

Within ten (10) calendar days of the date when requested or before commencement of the work, Consultant shall file with the County's Public Works Director Certificates acceptable to him of the insurance required by the Agreement. These certificates shall contain a provision that coverage's afforded under the policies will not be canceled until at least thirty (30) days prior written notice of cancellation has been given to the County's Public Works Department Director. Failure to so file these certificates is a breach hereof.

INDEMNIFICATION:

The Consultant agrees to indemnify, defend and save harmless the County, against all damages to property, structures and utilities together with all claims for damages arising out of personal injury, including accidental death due to the Consultant's negligent or willful acts or the negligent or willful acts of the Consultant's subcontractors, agents or employees, in the performance of work under this Agreement.

ARTICLE XI - PAYMENTS TO THE CONSULTANT:

For the Consulting services performed by Consultant under this Agreement and as full compensation therefor, and for all expenditures made and all expenses incurred by Consultant in connection with this Agreement, except as otherwise expressly provided

herein, subject to conformance with all provisions of this Agreement, County will pay Consultant as follows:

1. County will pay an amount not-to-exceed fee of \$35,000, as compensation for Consulting services and expenses as set forth in the Consultant's attached Proposal and Rate Schedule.
2. Upon successful completion of each task outlined in the proposal, the Consultant will present an invoice to the County, and said invoice shall be approved by The Director of Public Works who will recommend payment to the Consultant.

ARTICLE XIII - ENCLOSURES & ATTACHMENTS

Consultant's Proposal to Provide Consulting Services and Current Rate Schedule.

IN WITNESS WHEREOF, Jackson County, Missouri, has caused these presents to be executed in its behalf by its duly authorized agent; and the Consultant has hereunto set it hand and seal.

Approved by:

M. Sanders

Michael D. Sanders
County Executive

Recommended by:

J. Page

Jetty A. Page, P.E.
Director of Public Works

Approved to form this 1 day of May, 20 09

Mark S. Jones

Mark S. Jones
JACKSON COUNTY COUNSELOR

ATTEST:
Mary Jo Spino
CLERK OF COUNTY LEGISLATURE

By:

Sheila Shockey

Sheila Shockey, President
Shockey Consulting Services, LLC.

REVENUE CERTIFICATE

I hereby certify that there is a balance otherwise unencumbered to the credit of the appropriation to which this Agreement is chargeable, and a cash balance otherwise unencumbered in the treasury from which payment is to be made, each sufficient to meet the obligation of \$35,000 which is hereby authorized.

Date April 27, 2009 *[Signature]*
Finance Director

Account Code 004 - 1504 - 58051 15042009001

Tax ID # _____

**SHOCKEY CONSULTING SERVICES, LLC.
SCOPE OF SERVICES**

**EXHIBIT A
2/16/09**

Phase 100 – TRAINING

Task 101. Assist with Development of Funding Strategy

1. Provide a white paper describing various options. Research to include the possibility of modeling after the Missouri Transportation Finance Corporation Loan Policy. County will provide legal support to Shockey in terms of research and opinion regarding this task.
2. Conduct a workshop to discuss options.

Task 102. Stormwater Commission Training

1. Arrange for and conduct training at up to 10 Stormwater Commission meetings. This will include arranging for outside speakers and delivering training on topics for which Shockey has expertise.

Task 103 Standardized Presentation Materials

1. Prepare standardized presentation materials re: Stormwater Commission goals & activities and train potential speakers.

PHASE 200 – PLANNING

Task 201 Stormwater Master Plan

1. Prepare a Stormwater Master Plan that shall include all existing studies that have been completed throughout all of Jackson County. Data to be provided to Shockey by cities and Jackson County. Studies must be provided in a database or spreadsheet format and include, at a minimum: problem, location, proposed solution and preliminary cost estimate. Shockey is not responsible for gathering new data.
2. One copy of the final plan will be provided to Jackson County for duplication and distribution by the County. An electronic version will be provided to each of the Jackson County Stormwater Commissioners.

Task 202 Prepare a Top Ten Projects List

1. Working with the Jackson County Stormwater Commission, prepare a Top 10 priority project list.
2. A cost estimate will be developed for each based upon the preliminary engineering cost estimate provided in the studies submitted and using the BMP unit costs previously developed in the Watershed Management Plan completed previously.
3. Assist with the selection of an engineer to prepare cost estimates and preliminary design of the Top 10 projects.

PHASE 300 – FUNDING ASSISTANCE

Task 301 Assist with Funding Applications

1. Prepare applications & proposals to be submitted to agencies to help fund 2 of the Top 10 project list.

Jackson County Stormwater Commission
2009 - 2010 Scope of Services
2/19/2009

Staff-Hour Summary

TASK	Principal	Consultant	Clerical
Task 101. Assist with Development of Funding Strategy	16	36	3
Task 102. Stormwater Commission Training	30	30	2
Task 103 Standardized Presentation Materials	4	6	0
Task 201 Stormwater Master Plan	16	80	16
Task 202 Prepare a Top Ten Projects List	8	80	0
Task 301 Assist with Funding Applications	4	80	0
Total Hours	78	312	21

Estimated Fee 2009 Billing Rates	Total Hours	Rate	Salary Costs
Principal	78	\$100.00	\$7,800
Consultant	312	\$80.00	\$24,960
Clerical	21	\$40.00	\$840
		Total Labor Fee =	\$33,600
Expenses:			\$1,400
		Total Estimated Fee =	\$35,000