



MEMORANDUM

February 28, 2012

TO: The Board of Mayor and Aldermen

FROM: Eric S. Stuckey, City Administrator
David Parker, P.E., City Engineer
Paul Holzen, P.E., Director of Engineering
Tom Ingram, P.E., Engineering Supervisor
Jonathan Marston, P.E., Staff Engineer II

SUBJECT: Consideration of Amendment No. 2 to the professional Services Agreement for SR 252 (Wilson Pike) & McEwen Drive Intersection Improvements (COF Contract No. 2010-0152)

Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider Amendment No. 2 for the Professional Services Agreement (PSA) for SR 252 (Wilson Pike) & McEwen Drive Intersection Improvements Project

Background

BOMA approved the PSA for the above referenced project with Clinard Engineering Associates, LLC on October 30, 2010 in an amount not to exceed \$180,000. On December 13, 2011, BOMA approved Amendment No. 1 to the PSA, which allows Alfred Benesch & Company to complete the project per the original agreement with Clinard Engineering Associates, LLC.

The original agreement did not specifically allow for reimbursable items. Specifically, permit, review, and various other fees were not included in the scope of the original agreement. It is the intent of staff to allow the design consultant to submit permits and fees to regulatory authorities such as CSX on behalf of the City of Franklin. These fees would be paid initially by the consultant and then invoiced to the City of Franklin as reimbursable items by the consultant.

Financial Impact

No additional financial impact, beyond the mandatory fees themselves, is expected.

Recommendation

Staff recommends approval of Amendment No. 2 to COF Contract No. 2010-0152.

**AMENDMENT NO. 2 TO
PROFESSIONAL SERVICES AGREEMENT
FOR SR 252 (WILSON PIKE) & McEWEN DRIVE
INTERSECTION IMPROVEMENTS
COF Contract No 2010-0152**

THIS AMENDMENT is made and entered into on this the ____ day of _____, 2012, by and between the **City of Franklin, Tennessee** ("City") and **Alfred Benesch & Company** ("Consultant").

WITNESSETH:

WHEREAS, the City and Clinard Engineering Associates, LLC entered into a Professional Services Agreement ("Agreement") entitled SR 252 (Wilson Pike) & McEwen Drive Intersection Improvements (COF Contract No. 2010-0152) ("Project"), approved by the Franklin Board of Mayor and Aldermen (BOMA) on the 28th day of October, 2010; and

WHEREAS, Clinard Engineering Associates, LLC recently completed a business merger with the Consultant and accepted all benefits and liabilities to complete the Project, as per the original Agreement (COF Contract No 2010-0152) approved by BOMA on October 28, 2010 and Amendment 1 approved by BOMA on December 13, 2011; and

WHEREAS, the original Agreement did not allow for reimbursable items; and

WHEREAS, The City has requested to amend the original Agreement to allow for reimbursable items to include permit fees, review fees and other various fees not included in the scope of the original agreement.

NOW, THEREFORE, in consideration of these premises and the mutual promises contained herein, it is agreed by and between the parties as follows:

1. The foregoing recitals are incorporated by reference as if fully stated herein.
2. Consultant's Responsibilities and Duties. Consultant agrees to perform engineering and related technical services for the Project in accordance with the Scope of Services and agrees to be bound by the Terms and Conditions of the Professional Services Agreement all of which are found in Exhibit A of the Agreement approved by BOMA dated October 28, 2010.

3. City's Responsibilities and Duties. City shall pay Consultant reimbursable fees, not included in the scope of the original agreement, to include permit fees, review fees and other various fees associated with the project.

4. Waiver. Neither party's failure nor delay to exercise any of its rights or powers under this Amendment will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.

5. Severability. If any term or provision of the Amendment is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Amendment will not be affected.

6. Precedence. In the event of conflict between this Amendment and the provisions of the previous Agreement(s), or any other contract, agreement or other document to which this Amendment may accompany or incorporate by reference, the provisions of this Amendment will, to the extent of such conflict (or to the extent the Agreement is silent), take precedence unless such document expressly states that it is amending this Amendment.

7. Entire Agreement. The Amendment between the parties supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of the entire Amendment. The terms and conditions of this Amendment may not be changed except by an amendment expressly referencing this Amendment by section number and signed by an authorized representative of each party.

8. Additions/Modifications. If seeking any addition or modification to the Amendment, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Amendment, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Amendment or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Amendment; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.

9. Breach. Upon deliberate breach of the Amendment by either party, the non-breaching party shall be entitled to terminate the Amendment without notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

10. Survival. This Amendment shall survive the completion of or any termination of the original contract, revised contract, or agreement or other document to which it may accompany or incorporate by reference.

All other provisions of the Agreement and Amendment No 1 approved by BOMA dated October 28, 2010 and December 12, 2011, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

The CITY OF FRANKLIN, TENNESSEE

**ALFRED BENESCH &
COMPANY**

By: _____
Dr. Ken Moore
Mayor
Date: _____

By: _____
Print: _____
Title: _____
Date: _____

Attest:

Eric S. Stuckey
City Administrator
Date: _____

Approved as to form:

Shauna R. Billingsley, City Attorney