



MEMORANDUM

May 30, 2012

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator
David Parker, City Engineer/CIP Executive
Paul Holzen, Director of Engineering

SUBJECT: **Amendment No 2 to Professional Engineering Services For Stream Restoration Projects Master Agreement (COF Contract No. 2011-0032) Green Branch**

Purpose

The purpose of this memorandum is to provide information to the Board of Mayor and Aldermen (BOMA) regarding Amendment No 2 to the Professional Engineering Services For Stream Restoration Projects Master Agreement COF Contract No. 2011-0032 Green Branch.

Background

On March 22nd, 2011 BOMA approved Amendment No 1 for the Professional Engineering Services with URS for the Stream Restoration Project Master Agreement (COF Contract No. 2011-0032) authorizing the design for the Green Branch Stream Restoration Project. URS is currently finalizing the design and preparing to Bid the project. City Staff feels that in order to provide the attention necessary for the construction administration of the project an outside consultant is needed. URS is well suited to provide this service.

Financial Impact

URS has submitted a proposal of \$17,800.00 for the construction administration services requested.

Recommendation

Staff recommends approval of Amendment No 2 to the Professional Engineering Services Agreement with URS for the Stream Restoration Projects Master Agreement (COF Contract No. 2011-0032) in the amount of \$17,800.00.

**AMENDMENT NO. 2 TO
PROFESSIONAL ENGINEERING SERVICES
FOR STREAM RESTORATION PROJECTS
MASTER AGREEMENT
COF Contract No 2011-0032**

THIS AMENDMENT is made and entered into on this the 4 day of June, 2012, by and between the **City of Franklin, Tennessee ("City")** and **URS Corporation (URS) ("Consultant")**.

WITNESSETH:

WHEREAS, the City and the Consultant entered into a Professional Services Master Agreement ("Agreement") entitled Stream Restoration Projects (COF Contract No. 2010-0156), dated the 9th day of November, 2010; and

WHEREAS, the City and the Consultant amended this agreement through Amendment No 1 To Professional Engineering Services For Stream Restoration Project Master Agreement (COF Contract No. 2011-0032), dated the 22nd day of March, 2011; and

WHEREAS, said Amendment No 1 stipulated that the Consultant would be paid a not to exceed fee of \$53,070.85 as authorized by the City Engineer and as detailed in the fee Schedule; and

WHEREAS, the City has negotiated with the Consultant an increase in design services as described in Exhibit A – Construction Management Services in the amount not to exceed **Seventeen Thousand Eight Hundred and No/100 Dollars (\$17,800.00)**.

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 the services as provided for in **Exhibit A – Construction Management Services**.
3. City's Responsibilities and Duties. City shall pay Consultant for the cost of the additional Professional Services required in an amount not to exceed **Seventeen Thousand Eight Hundred and No/100 Dollars (\$17,800.00)**.

The City reserves the right to issue any payments jointly to the Consultant and Contractor when the City receives information that the Consultant has not paid its Contractor.

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 approved by BOMA dated November 9, 2010, and Amendment No 1 dated March 22, 2011, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

The CITY OF FRANKLIN, TENNESSEE

URS Corporation

By: _____
Dr. Ken Moore
Mayor
Date: _____

By: Jay D White
Print: JAY D. WHITE
Title: Vice President
Date: 4 JUN 2012

Attest:

Eric S. Stuckey
City Administrator
Date: _____

Approved as to form:

Shauna R. Billingsley, City Attorney



**Ms. Patricia Proctor
City of Franklin Engineering Department
109 Third Avenue South, Suite 124
Franklin, Tennessee 37064**

Dear Ms. Proctor:

RE: Construction Management Services Cost Estimate for the Green Branch Phase I – Stream Restoration and Phase II – Landscaping

In response to our discussion held May 8, 2012 in your office, regarding construction management of the Green Branch Restoration project we appreciate the opportunity to provide a cost estimate for these services. As we discussed, the City of Franklin prefers to separate the construction phases of the project into two rather than one in order to effectively take advantage of seasonal effects on each type of work. Phase I will be the stream restoration construction which is best suited for dry weather, i.e. summer. Phase II will be the landscaping segment of the project which is better suited for late fall months when cooler and wetter weather greatly benefit the success of vegetation planting.

Since the construction is broken down into two phases, each of which will require inspection and closeout, URS feels additional funding will be needed for these efforts. While much of the construction management scope of services will remain unchanged, a slight change in the scope and budget will be required and the overall benefit to the project will be substantially increased. Our estimate for both Phases of work is \$17,800 which is only an increase of approximately \$3,600 from the estimate provided in January, 2011.

We look forward to continuing our relationship with the City of Franklin. If you have any questions or need additional information, please do not hesitate to call me at 615.224.2105.

Respectfully submitted,
URS Corporation

A handwritten signature in black ink, appearing to read "J. Orr", written over a white background.

James R. Orr
Project Manager

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