



# MEMORANDUM

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September 28, 2012

**TO:** Board of Mayor and Aldermen

**FROM:** Kevin E. Comstock, ITS Project Manager  
Paul Holzen, P.E., Director of Engineering  
Eric S. Stuckey, City Administrator  
David Parker, P.E., City Engineer

**SUBJECT:** **Consideration of the Professional Services Agreement (Amendment No. 3 to COF 2010-0151) with Neel-Shafer for the construction administration of the Carlisle Lane @ HWY 96 Signalization Project in an amount not to exceed \$166,050**

### **Purpose**

The purpose of this memo is to provide the Board with information regarding a contract amendment for Construction Administration Services associated with the Carlisle Lane @ HWY 96 Signalization Project

### **Background**

On October 9<sup>th</sup> 2007, BOMA approved a contract with Neel Schaffer for the design of the roadway improvement and the traffic signal installation at this intersection. The contract has been amended twice prior on April 22<sup>nd</sup>, 2010 and on October 26<sup>th</sup>, 2010 to incorporate comments received at the Public Hearing associated with the project.

This amendment is to provide full Construction Administration and Inspection Services for the construction phase of this project. The bid date for this project is scheduled for October 18<sup>th</sup>, 2012.

### **Financial Impact**

The Construction Administration and Inspection is \$166,050 and represents approximately 8.3% of the Opinion of Probable Costs for this project (\$1,997,000). Funds are to be paid out of the Capital Projects Budget.

### **Recommendation**

Staff recommends approval of the Professional Services Agreement (Amendment No. 3 to COF 2010-0151) with Neel-Shafer for the construction administration of the Carlisle Lane @ HWY 96 Signalization Project in an amount not to exceed \$166,050

**AMENDMENT NO. 3 TO  
PROFESSIONAL SERVICES AGREEMENT  
FOR SR 96 WEST AT CARLISLE LANE AND  
BOYD MILL AVENUE  
COF CONTRACT NO 2010-0151**

**THIS AMENDMENT** is made and entered into on this the \_\_\_ day of \_\_\_\_\_, 2012, by and between the **City of Franklin, Tennessee** ("City") and **Neel-Schaffer Inc.** ("Consultant").

**WITNESSETH:**

**WHEREAS**, the City and the Consultant entered into a Professional Services Agreement ("Agreement") entitled Construction Administration of the Carlisle Lane Improvements and Signal Design at Highway 96 West, dated 9<sup>th</sup> October, 2007; and

**WHEREAS**, the City and the Consultant amended this agreement through Amendment No 1 to Professional Engineering Services, dated the 22 Day of April, 2012 for an additional \$2,100 to prepare three (3) additional conceptual design / drawings options due to comments received during a Project Public Hearing; and

**WHEREAS**, the City and the Consultant amended this agreement through Amendment No 2 to Professional Engineering Services, dated the 26th Day of October, 2010 for an additional \$13,000 for an Alignment Revision due to comments received during a Project Public Hearing and Direction from the Board of Mayor and Aldermen; and

**WHEREAS**, the Consultant has provided a revised Scope of Services and estimated Fee for said services as broken down in Exhibit A; and

**WHEREAS**, the City has negotiated with the Consultant an increase in services as described in Exhibit A for an additional cost of \$166,050.

**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 additional CEI Services as described in Exhibit A.

3. City's Responsibilities and Duties. City shall pay Consultant for the cost of the additional CEI Services required in an amount not to exceed **One Hundred Sixty-six Thousand and Fifty Dollars (\$166,050.00)**

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 dated October 9, 2007, Amendment No 1 Dated March 22, 2010, and Amendment No 2 dated October 26, 2010, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

**CITY OF FRANKLIN, TENNESSEE**

**NEEL SCHAEFER INC.**

By: \_\_\_\_\_  
**Dr. Ken Moore**  
Mayor  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
**Eric S. Stuckey**  
City Administrator/Recorder  
Date: \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
Shauna R. Billingsley, City Attorney

**Contract No.**

**Project:SR 96 at Boyd Mill/Carlise**

**Scope: Limited CEI (Based on 240 Consecutive Calendar Days (8 months) construction schedule**

TASK	MAN HOURS				
	Project Manager	Project Engineer	Inspector	CADD Tech	Admin
<b>CONSTRUCTION PHASE</b>					
Attend Pre-Con	6	6			
Approve Monthly Pay Request	8	54			
Attend & Document Weekly Meeting		240			
RFI (Roadway)		20			
RFI (Signals)	20	60			
RFI (Water Line)		8			
Shop Drawing Review (Roadway)		20			
Shop Drawing Review (Signals)	80	40			
Shop Drawing Review (Water Line)		8			
Limited Inspection (24hr/week)			960		
Surveying (Quantities Check)		16	20	40	

Total Hours	114	472	980	40	0
% of Work	7.10%	29.39%	61.02%	2.49%	0.00%
Hourly Rates	\$135.00	\$105.00	\$75.00	\$75.00	\$35.00
Sub-Total Cost/Classification	\$15,390.00	\$49,560.00	\$73,500.00	\$3,000.00	\$0.00

Sub-Total	\$141,450.00				
Direct Cost					
Mileage	\$3,000.00				
Printing	\$250.00				
Sub	\$13,800.00	SM&E - Material Testing			
Total Direct Cost	\$17,050.00				

**TOTAL FEE** \$158,500.00

**Contract No.**  
**Project:SR 96 at Boyd Mill/Carlise**  
**Scope: Additional Design Services**  
**Sub-Consultant: N/A**

TASK	MAN HOURS				
	Project Manager	Project Engineer	Engineer	Design Technician	Admin
<b>Additional Design Services</b>					
Waterline Design & Specs	2	8	32	12	
Addition Survey for Water Line			8	6	

Total	2	8	40	18	0
% of Work	2.94%	11.76%	58.82%	26.47%	0.00%
Hourly Rates	\$135.00	\$105.00	\$90.00	\$75.00	\$35.00
Sub-Total Cost/Classification	\$270.00	\$840.00	\$3,600.00	\$1,350.00	\$0.00

Sub-Total	\$6,060.00				
Direct Cost					
SWPPP Permit Fee	\$1,000.00				
Water Line Permit Fee	\$100.00				
Survey	\$390.00				
Total Direct Cost	\$1,490.00				
					Adams & Co - Stake Signal Poles For Utility Company
<b>TOTAL FEE</b>	<b>\$7,550.00</b>				

**Contract No.**  
**Project:SR 96 at Boyd Mill/Carlise**  
**Scope: As-Built**  
**Sub-Consultant: Adams & Co.**

TASK	MAN HOURS				
	Project Manager	Project Engineer	Engineer	CADD Technician	Admin
<b>AS-BUILT PLANS</b>					
Prepare As-Builts			4	20	
In-House QA/QC		4		4	
Submit to City	2	2			

Total	2	6	4	24	0
% of Work	5.56%	16.67%	11.11%	66.67%	0.00%
Hourly Rates	\$135.00	\$105.00	\$90.00	\$75.00	\$35.00
Sub-Total Cost/Classification	\$270.00	\$630.00	\$360.00	\$1,800.00	\$0.00
Sub-Total	\$3,060.00				
Direct Cost					
Mileage	\$100.00				
Printing	\$200.00				
Surveying	\$9,150.00	Adams & Co.			
Total Direct Cost	\$9,450.00				
<b>TOTAL FEE</b>	\$12,510.00				

**FEE PROPOSAL**  
**SR 96 at Boyd Mill/Carlisle**  
**Limited CE&I, Additional Design Services & As-Builts**

FEE PROPOSAL	
TASK	FEE
Limited CE&I	\$158,500.00
Additional Design Services - Staking Signal Poles, Water Line & Permit Fees	\$7,550.00
<del>As-Built Survey &amp; Drawings</del>	<del>\$12,510.00</del>
<b>TOTAL FEE</b>	<b>\$166,050.00</b>