

**AMENDMENT NO. 5 TO
PROFESSIONAL SERVICES AGREEMENT
FOR SR 96 WEST AT CARLISLE LANE AND
BOYD MILL AVENUE
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 the Consultant entered into a Professional Services Agreement ("Agreement") entitled Professional Services Agreement COF Contract No. 2010-0152 dated October 28, 2010; and

WHEREAS, said Agreement stipulated that the Consultant would be paid a not to exceed fee of \$180,000.00 as authorized by the City Engineer and as detailed in the Fee Schedule; and

WHEREAS, the City has approved Amendments to COF Contract No 2010-0152 on three (4) different occasions; Amendment No 1 (12/13/2011) at no cost; Amendment No 2 (03/13/2012) to allow for permits, review fees, etc. as reimbursable pass through cost; and Amendment No 3 (04/24/2012) additional design services at a cost of \$10,400 and Amendment No 4 (8/14/2012) additional design services for the Milcrofton Waterline Relocation Design at a cost of \$15,963; and

WHEREAS, the City has negotiated with the Consultant an increase in the services, as described in Exhibit A - Proposal for Construction Administration in the amount of **Two Hundred and Seven Thousand and No/100 Dollars (\$207,000.00)**

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 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 **Two Hundred and Seven Thousand and No/100 Dollars (\$207,000.00)**

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 28, 2010, Amendment No 1 Dated December 13, 2011, Amendment No 2 March 13, 2012 Amendment No 3 dated April 24, 2012, and Amendment No 4 dated August 14, 2012 are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

CITY OF FRANKLIN, TENNESSEE

**ALFRED BENESCH &
COMPANY**

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

EXHIBIT A



Alfred Benesch & Company
109 Westpark Drive, Suite 440
Brentwood, Tennessee 37027
www.benesch.com
P 615-370-6079
F 615-627-4066

August 30, 2012

Mr. Paul Holzen, P.E.
Engineering Director
City of Franklin
109 Third Avenue South
Franklin, Tennessee 37064

**Subject: Proposal for Construction Administration (CA)
SR-252 (Wilson Pike) & McEwen Drive Intersection Improvement
City of Franklin, Tennessee**

Dear Mr. Holzen:

Alfred Benesch & Company is pleased to have the opportunity to submit the professional services proposal to provide Construction Administration (CA) services for the subject project. Per your instructions we have based this estimate on a 14 month construction phase. Please see the attached sheets for additional details on the fee and scope of services.

If you have any questions or need any additional information, please feel free to contact me at 615.370.6079. We look forward to assisting the City of Franklin on this important project.

Sincerely,

Thomas M. Clinard, P.E.
Vice President
Tennessee Division Manager

Copy: Phil Clinard, Benesch
Sammie McCoy, Benesch
Jim Jeffers, Benesch
Jonathan Marston, City of Franklin
FILE

Scope of Work for Intersection Project at McEwen & Wilson Pike in Franklin Construction Administration

- Provide survey control for the project.
- Schedule and attend a project pre-construction meeting.
- Prepare minutes of the pre-construction meeting and distribute minutes.
- Schedule and attend bi-weekly progress meetings.
- Prepare and distribute minutes of the progress meetings.
- Attend on site meetings with the contractor and city as needed.
- Prepare and maintain a project file.
- Review and distribute shop drawings.
- Prepare, distribute, and offer help with change orders as needed.
- Provide part time inspection on a daily basis and ascertain quantities used.
- Provide materials testing as needed.
- Provide survey quantity checks as needed.
- Review and approve contractor's progress payments.
- Review erosion control features and conduct EPSC inspections twice each week.
- Prepare a project closure punch list and review with the contractor and city.
- Attend final walk through of project with the city and contractor.
- Prepare final closure documents.

ESTIMATE FOR McEWEN INTERSECTION PROJECT IN FRANKLIN

Assume 14 months project duration

RAW LABOR

Construction Administrator P.E. 4 hours per week @ \$59 x 61 weeks = \$14,396

Chief Inspector 4 hours per week @ \$34 x 61 weeks = \$8,296

Inspector 20 hours per week @ \$25 x 61 weeks = \$30,500

AA 2 hours per week @ \$20 x 61 weeks = \$2,440

TOTAL RAW LABOR = \$55,632

LABOR & OVERHEAD = 2.72 x \$55,632 = **\$151,319**

PROFIT = .13 x \$151,319 = **\$19,671**

VEHICLE USAGE 420 trips @ 20 miles per trip x .555 = **\$4,662**

MATERIALS TESTING = **\$20,000**

SURVEY FOR CONTROL AND QUANTITIES = **\$10,000**

PRINTING = **\$1000**

TOTAL = \$151,319 + \$19,671 + \$4,662 + \$20,000 + \$10,000 + \$1,000 = \$206,652



28 September 2012

TO: Board of Mayor and Aldermen (BOMA)

FROM: Eric Stuckey, City Administrator
David Parker, P.E., City Engineer/CIP Executive
Paul Holzen, P.E., Director of Engineering
Jonathan Marston, P.E., Staff Engineer

SUBJECT: Consideration of Amendment No 5 (COF 2010-0152) to the Professional Services Agreement (PSA) with Alfred Benesch & Company (Benesch) for Construction Administration and Inspection Services for the S.R. 252 (Wilson Pike) & McEwen Drive Intersection Improvements Project in an amount not to exceed \$207,000.00.

Purpose

The purpose of this memo is to recommend approval of the PSA with Benesch for the S.R. 252 (Wilson Pike) & McEwen Drive Intersection Improvements Project Construction Administration and Inspection Services.

Background

On September 28, 2010 BOMA approved Clinard Engineering Associates, now Benesch, to design the S.R. 252 (Wilson Pike) & McEwen Drive Intersection Improvements Project. This project provides improved traffic flow at the intersection of S.R. 252 (Wilson Pike) & McEwen Drive. The specific improvements include: the widening of the existing two lane bridge, across the CSX rail lines, from approximately 26 feet to approximately 84 feet, the widening of Wilson Pike to three lanes, and the widening of McEwen Drive to four lanes. The construction of this project is estimated at 12-14 months. The services provided by Benesch will supplement the project oversight provided by City Staff and ensure the final product is of the highest quality.

Financial Impact

Amendment No 5 is for a not to exceed amount of \$207,000.00 and represents approximately 10% of the Opinion of Probable Cost for this project (\$1,750,000). Funds are to be paid via a combination of the Capital Projects Budget and the \$1 million obtained by the Williamson County Board of Education.

Recommendation

Staff recommends approval of this PSA with Benesch in the amount not to exceed \$207,000.00.