



MEMORANDUM

March 18, 2013

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator
David Parker, City Engineer/CIP Executive
Paul Holzen, Director of Engineering
Patricia Proctor, Utilities Project Manager

SUBJECT: **Amendment No. 1 to Professional Services Agreement with Gresham Smith & Partners (GS&P)
7th Avenue/Fair Street Intersection to 5th Avenue North Sanitary Sewer Improvement
COF Contract No. 2012-0052**

Purpose

The purpose of this memo is to provide information to the Board of Mayor and Aldermen (BOMA) for the consideration of the Amendment No. 1 to the Professional Services Agreement (PSA) with GS&P for the 7th Avenue/Fair Street Intersection to 5th Avenue North Sanitary Sewer Improvement Project.

Background

GS&P was the consulting engineer on the West Main Water and Sewer Rehabilitation Phase 1 Project and Garney Construction was the contractor. When the City began talk of the second phase of this project Garney was asked to submit a price quote for this work. The intent was to add this project to Garney's existing contract as a change order since they were already onsite and could save the City another mobilization fee. When the quote was submitted in the amount of \$597,700.00, City Staff decided that a project of this magnitude should be competitively bid. GS&P was instructed to prepare the documents and proceed with bidding the project.

When the original proposal for this project was submitted the construction time frame was 60 days. Because of the limited work period within the McDonald's property the time frame was extended to 120 days. GS&P is requesting to be compensated for the Construction and Post-Construction Phases based on 4 hours per week for the 17 week time frame.

City Staff requested that the water line extension on 7th Avenue from West Main Street to Columbia Avenue be added to this project. This was not part of the original proposal so Staff requested GS&P to add this design and survey to this increase in fees.

Financial Impact

The cost as negotiated with GS&P for the additional services is an amount not to exceed \$11,040.00. This project will be funded from the Water and Sewer Fund.

Recommendation

Staff recommends approval of the Amendment to the Professional Services Agreement with GS&P (COF Contract No. 2012-0052) for an amount not to exceed \$11,040.00.

**AMENDMENT NO. 1 TO
PROFESSIONAL ENGINEERING SERVICES
FOR 7TH AVENUE/FAIR STREET INTERSECTION TO 5TH
AVENUE NORTH SANITARY SEWER IMPROVEMENT
COF Contract No. 2012-0052**

THIS AMENDMENT is made and entered into on this the ___ day of _____, 2013, by and between the **City of Franklin, Tennessee** ("City") and **Gresham Smith and Partners (GS&P)** ("Consultant").

WITNESSETH:

WHEREAS, The City and the Consultant entered into a Professional Services Agreement ("Agreement") entitled 7th Avenue/Fair Street Intersection to 5th Avenue North Sanitary Sewer Line Improvement, dated April 24, 2012; and

WHEREAS, said Agreement stipulated that the Consultant would be paid a not to exceed fee of \$45,000 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 the services, as described in Attachment A for Construction and Post-Construction Phases Request in the amount of **Eleven Thousand Forty Dollars and No/100 Dollars (\$11,040.00)**.

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 Design Services as described in Attachment A - 7th Avenue/Fair Street Intersection to 5th Avenue North Sanitary Sewer Line Improvement Additional Fees for Construction and Post-Construction Phases Request.
3. City's Responsibilities and Duties. City shall pay Consultant for the cost of the additional Services required in an amount not to **Eleven Thousand Forty Dollars and No/100 Dollars (\$11,040.00)**.

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 April 24, 2012, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

CITY OF FRANKLIN, TENNESSEE

GRESHAM SMITH &
PARTNERS (GS&P)

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



G R E S H A M
S M I T H A N D
P A R T N E R S

April 2, 2013

Paul Holzen, P.E.
Director of Engineering
City of Franklin
109 3rd Avenue South
Franklin, TN 37064

**Subject: ~~West Main Water and Sewer Rehabilitation~~
~~Phase 2: 7th Avenue/Fair Street Intersection to 5th Avenue North Sanitary~~
~~Sewer Line Improvement, (West Main Phase-2)~~
Additional Fees for Construction and Post-Construction Phases
Franklin, TN
COF Contract No. 2012-0052.
GS&P Project No. 28442.01**

Dear Paul:

This letter is to request additional fee for the Construction and Post-Construction Phases of the **7th Avenue/Fair Street Intersection to 5th Avenue North Sanitary Sewer Line Improvement, (West Main Phase-2)**. The additional fee is required due to the time spent by Gresham Smith and Partners, GS&P, preparing information, exhibits, and discussing the project with Garney Construction Companies in order for them to price and submit a construction change order to incorporate Phase 2 into their Phase 1 contract. When the final version of the change order from Garney was submitted for Phase 2 to the City for approval for \$597,700.00 it was rejected due to cost. City Staff did not feel it was appropriate to offer additional work of that value without going through the proper bidding process. The City instructed GS&P to prepare bid documents and proceed with bidding the project. Currently, the bidding process is almost complete. On February 27, 2013 bids were received and the low bidder was Stewart-Richey Construction for the amount of \$409,045.75. By bidding the project the City saved \$188,654.25.

In March of 2012 when GS&P prepared the Proposal for Engineering Services, we based our fees on bidding the project and allowing 60 days for construction. We believe this allotted time was consumed during the change order negotiations with Garney. Also circumstances arose during this negotiation that required the construction period to be lengthened. The most significant of which was the limited work period in the McDonald's parcel. Work in this area is only allowed to occur from 11PM to 5AM. To compensate for this restraint construction time was extended to 120 days, approximately 17 weeks.

The additional fee request is for hours required for Construction and Post-Construction Phases which includes submittal review, site visits for contractor coordination, final inspection, punch lists, and close out documentation required for the project. Additional time has been estimated and included in this request for the services listed above.

We estimate the additional time required for GS&P to provide Construction and Post-Construction Phases to complete the project will be on average 4 hours per week for the 17 week period, which equates to 68 hours and \$7,140.00. We request an additional \$7,140.00 dollars be added to our fees for the completion of the project.

Design Services For The Built Environment



Paul Holzen, PE
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Also, we were asked to perform additional services to include 440' of 6" waterline in the project which was not included in the original scoped fees. These additional services, survey of the route and design, consumed approximately 46 hours and \$3,900.00. We request that an additional \$3,900.00 dollars be added to our fees for services already completed.

In summary, we ask that a total of \$11,040.00 to be added to our contracted fees for work completed and future work to complete the project.

Thanks again for the opportunity to work with the City of Franklin on this project and please call if you have any questions about the additional fee required to complete the Construction and Post-Construction Phases.

Sincerely,
Gresham, Smith and Partners

A handwritten signature in black ink, appearing to read 'Michael L. Orr'.

Michael L. Orr, PE
Project Manager

Copy Patricia Proctor, PE, City of Franklin
 John Reidy, GS&P
 File No: 28442.01