



HISTORIC
FRANKLIN
TENNESSEE

ITEM #22
BOMA 04/23/13

MEMORANDUM

March 28th, 2013

TO: Board of Mayor and Aldermen

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

SUBJECT: **Consideration of Amendment No 3 (COF Contract 2012-0097) with Kimley Horn and Associates in an amount not to exceed \$7,200 for Carothers Corridor Development Study Project**

Purpose

The purpose of this memo is to provide information to the City of Franklin Board of Mayor and Alderman (BOMA) for consideration of Amendment No 2 for the Carothers Corridor Development Study.

Background

In June of this year, the Board approved a Professional Service Agreement (PSA) with Kimley Horn and Associates to assist the City in the review of multiple traffic impact studies submitted for development within the Carothers Parkway Corridor. The preliminary results of that analysis indicated significant congestion within the Cool Springs Blvd, Carothers Parkway and McEwen Drive corridors by the year 2025 based on the currently projected densities. In order to address specific concerns and guidance from BOMA and the development community, staff requested a third “hybrid” option be developed into function exhibits.

Amendment No 3 adds development of functional exhibits for a Hybrid option and additional meeting time to assist with public presentations if needed.

Financial Impact

\$36,500 – Contract 2012-0097 (BOMA approved 6/12/2012)

\$17,500 – Amendment 1 (BOMA approved 10/9/2012)

\$52,500 – Amendment 2 (BOMA approved 10/23/2012)

\$7,200 – Amendment 3

\$113,700 - Total Cost

\$7,200 additional will be paid for out of the approved TOC FY 2012-2013 budget line item 82560 Consultant Services.

Recommendation

Staff recommends approval of the PSA in an amount not to exceed \$7,200 for the Carothers Corridor Development Study Project.

**AMENDMENT NO. 3 TO
PROFESSIONAL SERVICES AGREEMENT
FOR THE CAROTHERS CORRIDOR DEVELOPMENT STUDY
PROJECT
COF CONTRACT NO 2012-0097**

THIS AMENDMENT is made and entered into on this the ___ day of _____, 2013, by and between the **City of Franklin, Tennessee** ("City") and **Kimley Horn and Associates, Inc.** ("Consultant").

WITNESSETH:

WHEREAS, the City and the Consultant entered into a Professional Services Agreement ("Agreement") entitled Professional Services Agreement COF Contract No. 2012-0097 dated June 12, 2012; and

WHEREAS, said Agreement stipulated that the Consultant would be paid a not to exceed fee of \$36,500.00 as authorized by the City Engineer and as detailed in the Fee Schedule; and

WHEREAS, the City and the Consultant amended this agreement through Amendment No 1 to Professional Engineering Services, Dated the 9th Day of October, 2012 for an additional \$17,500 to prepare functional exhibits for a Widen to the inside option; and

WHEREAS, the city and the consultant amended this agreement through Amendment No 2 to Professional Engineering Services, Dated 23rd of October, 2012 for an additional \$52,500 to include functional exhibits for a widen to the outside option and updated traffic data and analysis; and

WHEREAS, the City has negotiated with the Consultant an increase in the services, as described in Attachment A – Proposal for Professional Services Transportation Planning Report Intersection of McEwen Drive / Carothers Parkway Vicinity in the amount of **Seven Thousand Two Hundred and No/100 Dollars (\$7,200.00)**.

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.

3. City's Responsibilities and Duties. City shall pay Consultant for the cost of the additional Services required in an amount not to exceed **Seven Thousand Two Hundred and No/100 Dollars (\$7,200.00)**

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 June 12, 2012 and Amendment No 1 Dated October 9, 2012 and Amendment No 2 dated October 23, 2012 area unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

CITY OF FRANKLIN, TENNESSEE

KIMLEY HORN AND ASSOCIATES, 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