



HISTORIC  
FRANKLIN  
TENNESSEE

ITEM #6  
CIC  
06-13-13

## MEMORANDUM

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June 4, 2013

**TO:** Board of Mayor and Alderman

**FROM:** Eric S. Stuckey, City Administrator  
David Parker, P.E.; CIP Executive/City Engineer  
Paul Holzen, P.E.; Director of Engineering  
Ben Worley, Right of Way Agent/Project Manager

**SUBJECT:** Consideration of Amendment Number 1 to the Professional Services Agreement with TRC Solutions for Archaeological Services for the Eastern Flank Battlefield Project (COF Contract No. 2013-0040).

### **Purpose**

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information needed to approve Amendment Number 1 to the Professional Services Agreement with TRC Solutions.

### **Background**

In April 2008 TRC Solutions completed a Phase I Archaeological Survey for the City of Franklin on the Eastern Flank Battlefield site. During their investigation TRC found three potentially eligible archaeological sites that would be eligible for listing in the National Register of Historic Places. Since federal monies are being used on the project the city has to follow the direction of the State Historic Preservation Office which has required that we either complete a phase II archaeological survey or provide monitoring by a qualified professional archaeologist during earth moving activities.

During earth moving activities TRC Solutions found a site of early settlers, probably from the early 1800's that was in the roadway. The sites have been excavated and artifacts that were found have been taken to their Lab for analysis and a final report of the site will be completed and submitted to the State Historical Preservation Office.

The original budget number of \$38,720.00 was an hourly rate for site monitoring during earth moving activities, during the excavation of the site, TRC has three to four staff members working on site, and additional staff working on reporting in the lab. The additional \$8,500.00 is for monitoring the remaining earth moving activity and to complete the lab work and reporting of the historical site.

### **Financial Impact**

The Financial impact is an additional \$8,500.00, this will make the total contract amount \$47,220.00 (\$38,720.00 + \$8,500.00).

### **Recommendation**

Staff recommends approval of Amendment Number 1.

**AMENDMENT NO. 1 TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF FRANKLIN AND TRC SOLUTIONS  
COF Contract No. 2013-0040**

THIS AMENDMENT is made and entered into on this the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Franklin, Tennessee ("City") and TRC Solutions ("Consultant").

**WITNESSETH:**

WHEREAS, the City and the Consultant entered into a Professional Services Agreement ("Agreement") for the Archeological Survey for Eastern Flank Battlefield (COF Contract No 2013-0040) ("Project"), dated the 23<sup>rd</sup> day of April, 2013; and

WHEREAS, said Agreement stipulated that the Consultant would be paid a fee of \$38,720.00 for Archeological Survey for the Project; and

WHEREAS, construction has revealed historical sites that required additional work and reporting; and

WHEREAS, the City has negotiated with the Consultant an additional fee for Archeological Assessment during construction as described in Exhibit A in an amount not to exceed Eight Thousand Five Hundred and No/100 Dollars \$8,500.00; and

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 Archeological Services as provided for in Exhibit A, and the Professional Services Agreement Approved by BOMA dated April 23, 2013.
3. City's Responsibilities and Duties. City shall pay Consultant in an amount not to exceed **Eight Thousand Five Hundred and No/100 Dollars (8,500.00)** as described in Exhibit A under Compensation for the work under this Agreement Amendment.
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 23, 2013 are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

**CITY OF FRANKLIN, TENNESSEE**

**TRC Solutions**

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

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

**Attest:**

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

**Approved as to form:**

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



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May 29, 2013

Ben Worley  
Engineering Department  
Franklin City Hall  
109 3<sup>rd</sup> Avenue South  
Franklin TN 37065

COF 2011-0037  
Amendment 1  
Exhibit A

**RE: CHANGE ORDER REQUEST, Archaeological Monitoring, Grading Operations at the Eastern Flank Battlefield Park, Franklin, Tennessee.**

Mr. Worley,

Following our phone conversation this week, this letter serves as our request for a budget supplement to cover completion costs for the above referenced project, due to unforeseen tasks and schedule extensions.

The original budget of \$38,720 was based on an expected time frame of two months (44 days) for eight hours per day of archaeological monitoring of grading operations. During the initial intensive period of grading, over about six weeks, the work actually took place for up to 11 hours per day, with some Saturday work as well. In addition, the discovery and required excavation of an important archaeological site dating to the early settlement period (ca. 1800 to 1810) directly within the proposed road corridor required time commitments beyond the original scope of the project. This included additional staffing in the field and significant additional time for negotiations with the archaeological staff of the Tennessee Department of Transportation (TDOT) and the State Historic Preservation Office (TN-SHPO), lab work in analyzing the artifacts, and, in coming weeks, completion of the project report.

At this point, our costs have reached about 98 percent of the original budget. **We are requesting a budget supplement of \$8,500.00 to cover expected additional costs** in continued monitoring of the ongoing grading operations and in order to meet the archaeological site reporting requirements set by TDOT and the TN-SHPO.

I appreciate your expedited consideration of this request, and I look forward to continuing to work with you on a successful completion of the project.

Best,

A handwritten signature in black ink that reads "Larry McKee".

Larry McKee, PhD, RPA  
Program Manager, Archaeology