



HISTORIC
FRANKLIN
TENNESSEE

ITEM #02
CIC
06-13-13

MEMORANDUM

June 6, 2013

TO: Board of Mayor and Aldermen

FROM: David Parker, City Engineer/CIP Executive
Eric Stuckey, City Administrator

SUBJECT: **Amendment No 1 to PSA with Smith Seckman Reid, Inc.
For Sanitary Sewer Basin Study Updates
COF Contract No 2012-0194**

Purpose

This memorandum is to provide the Franklin Board of Mayor and Aldermen (BOMA) with the information necessary for a decision concerning the referenced Amendment No 1 to the existing Professional Services Agreement (PSA) with Smith Seckman Reid, Inc. (SSR).

Background

On December 11, 2012, the BOMA approved the COF Contract No 2012-0194; PSA with SSR for the Sanitary Sewer Basin Study Updates for the Mayes Creek Basin, Watson Branch Basin and West Basin. This Agreement for a Lump Sum Amount of \$32,300.00 and was based on using what was believed at the time as the established method of calculating anticipated sanitary sewer flows from development properties. This flow calculation method used the allowable developable density excluding the areas made up of flood plains, steep slopes and an allowance for roadway rights-or-way. Upon completion of the first draft and presentation of the Basin Studies, the City's engineering staff discovered that the City's planning staff did not exclude these areas when calculating the densities of proposed developments. Therefore, SSR was directed to revise the anticipated total and peak flows for the Basin Studies to reflect this different density calculation.

City engineering staff also discovered after the initial Agreement was entered into that there was no provision to provide sanitary sewer alignment and sizing for the sanitary sewer mains required to transport the collected sanitary sewerage from the Mayes Creek Basin to the Goose Creek Basin. Therefore, SSR was asked to provide this work that has been named the Mayes Creek Connector.

Upon completion of the Sanitary Sewer Basin Study Updates with the inclusion of the Mayes Creek Connector, SSR has requested an additional payment in the amount of \$9,000.00 to cover the cost of the additional work directed by the City. This cost has been evaluated and appears to be appropriate for the amount of the change and additional work requested by the City.

Financial Impact

With approval of Amendment No 1 the cost of the completed Sanitary Sewer Basin Study Updates increases by \$9,000.00. The total project cost will then be \$41,300.00.

Recommendation

Staff recommends approval of Amendment No 1 to COF Contract 2012-0194 in the amount of \$9,000.

**AMENDMENT NO. 1 TO
PROFESSIONAL SERVICES AGREEMENT
FOR SANITARY SEWER BASIN STUDY UPDATES
COF Contract No 2012-0194**

THIS Amendment is made and entered into on this the ____ day of _____, 2013, by and between the **City of Franklin, Tennessee** ("City") and **Smith Seckman Reid, Inc. (SSR)** ("Consultant").

WITNESSETH:

WHEREAS, the City and Consultant entered into a Professional Services Agreement entitled City of Franklin, Tennessee Professional Services Agreement, Sanitary Sewer Basin Study Updates, dated the 11th day of December, 2012; and

WHEREAS, the Agreement required revision to provide for the sanitary sewer main sizing to connect the Mayes Creek Basin to the Goose Creek Basin; and

WHEREAS, the City has revised the method of calculating the allowable densities for potential development properties, thus requiring the modification of the studies to include the increase of the anticipated total and peak sanitary sewer flows.

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. The Consultant shall include the detailed study for the Mayes Creek Basin Connector and shall modify the other Basin Studies to include the anticipated total and peak sanitary sewer flows based without excluding the flood plains, steep slopes, or roadway rights-of-way (see **Exhibit A** attached). Exhibit A shall be considered as an integral part hereof.
3. City's Responsibilities and Duties. The City shall pay the Consultant in the amount of **Nine Thousand and No/100 Dollars (\$9,000.00)** for the additional work as described in Exhibit A.
4. Force Majeure. Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of Force Majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following, as further described below: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or *restraints of any kind of the government of the United States or of the State* or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage

or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party. The parties agree to use The Old Farmer's Almanac, Nashville International Airport (<http://www.almanac.com/weatherhistory/oneday.php?month=2&day=21&year=2007&number=723270&wban=13897>) to determine whether weather conditions constitute a force majeure. If, on a particular date, thunder, tornadoes and fog are recorded, or if total precipitation exceeds one half inch, then it shall constitute a force majeure.

5. Equal Employment Opportunity. In connection with this Amendment and the project, CLIENT and CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, disability or marital status. CLIENT and CONSULTANT will take affirmative action to ensure that CONSULTANT is employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT shall insert the foregoing provision in all contacts relating to this Amendment or project.

6. Title VI – Civil Rights Act of 1964. CLIENT and CONSULTANT shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. CONSULTANT shall insert the foregoing provision in all contacts relating to this Amendment or project.

7. Conflicts of Interest. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Agency in connection with any work contemplated or performed relative to this AGREEMENT. CONSULTANT shall insert the foregoing provision in all contacts relating to this Amendment or project.

8. Notices. Any notice provided pursuant to the Amendment, if specified to be in writing, will be in writing and will be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) days after deposit in the mail where sender is located, postage prepaid, certified mail return receipt requested; (c) if by next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth below (or set forth in such other document which the Amendment may accompany, or such other address as either party may in the future specify in writing to the other):

In the case of the CLIENT:

City of Franklin
Attn: David Parker
109 Third Ave. South
P.O. Box 305

In the case of CONSULTANT:

Smith Seckman Reid, Inc.
Attn: Bo Butler
2995 Sidco Drive
Nashville, TN 37204

Franklin, TN 37065-0305
(615) 550-6660
davidp@franklintn.gov

(615) 460-0515
BButler@SSR-Inc.com

9. Waiver. Neither party's failure or delay to exercise any of its rights or powers under the 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.

10. 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.

11. Precedence. In the event of conflict between this Amendment and the provisions of the previous Agreements, or any other contract, agreement or other document to which the Amendment may accompany or incorporate by reference, the provisions of this Agreement 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. All other provisions on the Agreement dated December 11, 2012 are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

The CITY OF FRANKLIN, TENNESSEE

Smith Seckman Reid, Inc.

By: _____
Dr. Ken Moore
Mayor

By: _____
Print Name: _____
Title: _____

Attest:

Eric S. Stuckey
City Administrator

Approved as to form:

Shauna R. Billingsley
City Attorney