

**AMENDMENT NO. 2 TO  
PROFESSIONAL ENGINEERING SERVICES AGREEMENT  
FOR 7<sup>TH</sup> AVENUE/FAIR STREET TO 5<sup>TH</sup> AVENUE NORTH  
SANITARY SEWER IMPROVEMENTS PROJECT  
COF Contract No. 2012-0052**

**THIS AMENDMENT** is made and entered into on this the \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the **City of Franklin, Tennessee** ("City") and **Gresham Smith & Partners** ("Consultant").

**WITNESSETH:**

**WHEREAS**, City and Consultant entered into a Professional Engineering Services Agreement ("Agreement") 7<sup>th</sup> Avenue/Fair Street to 5<sup>th</sup> Avenue North Sanitary Sewer Improvements Project (COF Contract No 2012-0052), dated the 24th day of April 2012; and

**WHEREAS**, said Agreement stipulated that the Consultant would be paid a not to exceed fee of \$45,000.00, as authorized by the City Engineer and as detailed in the Fee Schedule; and

**WHEREAS**, the City and the Consultant amended this Agreement (COF Contract No. 2012-0052) through Amendment No 1 for additional work required for the 7<sup>th</sup> Avenue/Fair Street To 5<sup>th</sup> Avenue North Sanitary Sewer Improvements Project, dated the 23rd day of April 2013; and

**WHEREAS**, said Amendment No 1 stipulated that the Consultant would be paid a not to exceed fee of \$11,040.00 , as authorized by the City Engineer and as detailed in the Fee Schedule; and

**WHEREAS**, the City and the Consultant have identified the need to amend the Agreement a second time due to additional work performed by the Consultant as a result of several construction issues; and

**WHEREAS**, the City has negotiated with the Consultant an increase in the fee for construction administration, as described in Exhibit A, in the amount of **Four Thousand Five Hundred and No/100 Dollars (\$4,500.00)**

**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 work as proposed in their January 31, 2014 letter of proposal (**Exhibit A**) which includes the Scope of Services for this Amendment, all of which shall be considered as an integral part hereof.

3. City's Responsibilities and Duties. City shall pay Consultant for the cost of the work as described in Exhibit A an amount not to exceed **Four Thousand Five Hundred and No/100 Dollars (\$4,500.00)**.

The City reserves the right to issue any payments jointly to the Consultant and Sub-Consultant when the City receives information that the Consultant has not paid its Sub-Consultant.

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, and Amendment No. 1 to the Agreement dated April 23, 2013, are unchanged and remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this Amendment.

**The 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  
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

COF 2012-0052  
Amendment No. 2  
EXHIBIT A

CITY OF FRANKLIN  
ENGINEERING  
Rec'd By: AR Date: 2/4/14

January 31, 2014

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: Sewer Rehabilitation from Fair St to 5<sup>th</sup> Av. N.  
**Additional Fees for Onsite Construction Administration**  
**Franklin, TN**  
GS&P Project No. 28442.01

Dear Paul:

This letter is to request additional fee for the Onsite Construction Administration for the West Main Water and Sewer Rehabilitation Phase 2 Project. The additional fee is required due to the time spent by Gresham Smith and Partners (GS&P) for facilitating construction meetings and having to be onsite while work was being done to bridge communications with the Contractor (Stewart Richey) and the Water Management Department staff.

The additional fee request is for hours spent at construction meetings with the City and Contractor to determine the degree of repair required to raise a newly installed 12" sewer line to the proper grade and for onsite Engineer Construction Administration to make sure the Contractor was making the proper adjustments and explain to the City Staff how the adjustments effected the system.

In summary, we have expended an additional 30 hours beyond our scoped fee to help the City with Construction Administration and ask that a total of \$4,500 to be added to our contracted fees for work completed on 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 Phase.

Sincerely,  
Gresham, Smith and Partners

Michael L. Orr, PE  
Project Manager

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

Design Services For The Built Environment



MEMORANDUM

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February 11, 2014

**TO:** Board of Mayor and Aldermen

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

**SUBJECT:** **Amendment No. 2 to Professional Services Agreement with Gresham Smith & Partners (GS&P)**  
**7<sup>th</sup> Avenue/Fair Street Intersection to 5<sup>th</sup> Avenue North Sanitary Sewer Improvements**  
**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. 2 to the Professional Services Agreement (PSA) with GS&P for the 7<sup>th</sup> Avenue/Fair Street Intersection to 5<sup>th</sup> Avenue North Sanitary Sewer Improvement Project.

**Background**

Gresham Smith & Partners has expended an additional 30 hours of construction administration beyond their proposed fee due to issues encountered in the field during construction of the sanitary sewer line portion of this project.

**Financial Impact**

Gresham Smith & Partners has proposed a not to exceed cost of \$4,500.00 for the additional consulting services requested. This will be paid out of the Sewer General fund.

**Recommendation**

Staff recommends approval of the Amendment No. 2 to the Professional Services Agreement with Gresham Smith & Partners (COF Contract No. 2012-0052) for an amount not to exceed \$4,500.00.