



MEMORANDUM

March 12, 2014

TO: Board of Mayor and Aldermen

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

SUBJECT: **Amendment No. 3 to Professional Services Agreement with Hethcoat & Davis, Inc. (H&D) I-65 Widening/Goose Creek Interchange Water Line Relocation COF Contract No. 2012-0050**

Purpose

The purpose of this memorandum is to provide information to the Board of Mayor and Aldermen (BOMA) for the consideration of the Amendment No. 3 to the Professional Services Agreement (PSA) with Hethcoat & Davis (H&D) to provide inspection services for the construction of the water line relocations associated with the I-65 widening/Goose Creek Interchange project.

Background

As specified in Contract No. 7913 between the City of Franklin and the Tennessee Department of Transportation (TDOT), the City of Franklin is responsible for inspecting and approving all items of the water line relocation work. Also stated in the contract is that the City of Franklin shall provide inspection reports using the form located in the current TDOT Construction Circular Letters Section 105.07. This must be done in order for the City of Franklin to receive any reimbursement for the relocation of water lines not located on public highway right-of-way. Staff recommends that a full time inspector be onsite to record the information as required per the TDOT form. Due to the small number of inspectors within the Water Management Department, this means the hiring of an outside firm to perform this work.

Financial Impact

Hethcoat & Davis has proposed a not to exceed cost of \$31,600.00 for the resident inspection services requested. These services will be paid for on an hourly basis in accordance with the billing rates included with the proposal.

Recommendation

Staff recommends approval of the Amendment No. 3 to the Professional Services Agreement with Hethcoat & Davis (COF Contract No. 2012-0050) for an amount not to exceed \$31,600.

**AMENDMENT NO. 3 TO
PROFESSIONAL ENGINEERING SERVICES
FOR I-65 WIDENING/GOOSE CREEK INTERCHANGE
WATER LINE RELOCATION
COF Contract No. 2012-0050**

THIS AMENDMENT is made and entered into on this the ____ day of _____, 2014, by and between the **City of Franklin, Tennessee** ("City") and **Hethcoat & Davis, Inc.** ("Consultant").

WITNESSETH:

WHEREAS, City and Consultant entered into a Professional Engineering Services Agreement ("Agreement") entitled I-65 Widening/Goose Creek Interchange water line relocation (COF Contract No 2012-0050), dated the 24th day of April 2012; and

WHEREAS, said Agreement stipulated that the Consultant would be paid a not to exceed fee of \$39,000.00, as authorized by the City Engineer and as detailed in the fee Schedule; and

WHEREAS, the City and the Consultant amended this Agreement through Amendment No 1 To Professional Engineering Services For I-65 Widening/Goose Creek Interchange water line relocation (COF Contract No. 2012-0050), dated the 11th day of September, 2012; and

WHEREAS, said Amendment No 1 stipulated that the Consultant would be paid a not to exceed fee of \$7,070.00 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 2 To Professional Engineering Services For I65 Widening/Goose Creek Interchange water line relocation (COF Contract No. 2012-0050), dated the 14th day of May, 2013; and

WHEREAS, said Amendment No 2 stipulated that the Consultant would be paid a not to exceed fee of \$9,670.57 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 provide a fulltime resident inspector onsite for the water line relocation project in order to fulfill the inspection requirements of the Tennessee Department of

Transportation (TDOT) to receive reimbursement for the relocation costs on private utility easements;

WHEREAS, the City has negotiated with the Consultant an increase in inspection services, as described in Exhibit A in the amount of **Thirty-One Thousand Six Hundred and No/100 Dollars (\$31,600.00)**.

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 February 26, 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 **Thirty-One Thousand Six Hundred and No/100 Dollars (\$31,600.00)**.

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, Amendment No. 1 dated September 11, 2012 and Amendment No. 2 dated May 14, 2013, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

The CITY OF FRANKLIN, TENNESSEE

Hethcoat & Davis, Inc.

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

HETHCOAT DAVIS

February 26, 2014

File No. 1082-02

Mr. Paul Holzen, PE
Engineering Manager
City of Franklin
109 Third Avenue South
Franklin, TN 37064

**Re: Resident Project Representative Services for Utility Relocations
I65 from N. of SR 840 to N. of SR 248 (Goose Creek Interchange)
TDOT Project No. 94002-2181-44**

Dear Paul:

As requested by the City of Franklin, we are proposing to provide onsite resident project representative (RPR) services for the utility relocation work associated with the above-referenced project. The RPR's duties would include tasks as set forth on Exhibit A of this attachment.

Hethcoat & Davis, Inc. proposes to provide the resident project representative services for up to five (5) consecutive months at a fee not to exceed \$56,400. A breakdown of the fee is shown below.

<u>Description</u>	<u>Rate</u>	<u>Monthly Fee</u>
Standard Rate	\$50 per hour (up to 40 hours per week)	\$8,000.00
Overtime Rate	\$75 per hour (up to 10 hours per week)	\$3,000.00
	Total Monthly Fee =	\$11,000.00
	Subtotal Fee (up to 5 months) =	\$55,000.00
Mileage Reimbursement	\$0.56 per mile (up to 25 miles per day)	\$1,400.00
	Total RPR Fee (up to 5 months) =	\$56,400.00

Note that the fee includes up to 40 hours per week at a standard hourly rate and up to 10 hours per week at an overtime (time and a half) hourly rate. The fee also includes mileage reimbursement for up to 25 miles per day.


Based on the summary of bids for the project, the construction cost for water line relocation is approximately 56% of the total utility relocation cost, with the balance (or 44%) representative of the sanitary sewer (including reclaimed water and fiberoptic) construction cost. Considering this, we would propose to break apart the resident project representative fees for each utility accordingly, as follows:



○ RPR for water lines:	\$31,600.00 (not to exceed)
○ RPR for sewer lines:	\$24,800.00 (not to exceed)
<i>Total:</i>	<i>\$56,400.00 (not to exceed)</i>

If this proposal is acceptable, please indicate by executing this document in the space designated below. Retain one copy for your files and return one executed copy to us for our files. We sincerely appreciate the opportunity to work with you and the City of Franklin and to present this proposal. If you should have any questions or require additional information, please call.

Hethcoat & Davis, Inc.


Keith Davis, PE
Secretary

Accepted:
City of Franklin, TN

(Name & Title)

(Date)

Attachment(s): Exhibit A: "Duties, Responsibilities, and Limitations of Authority of Resident Project Representative"

Exhibit A
Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

1.01 *Resident Project Representative*

- A. Engineer shall furnish a Resident Project Representative (“RPR”), assistants, and other field staff to assist Owner in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit may provide full time representation or may provide representation to a lesser degree.

- B. Through such additional observations of Contractor’s work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor’s work in progress, supervise, direct, or have control over the Contractor’s Work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor’s work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor’s performing and furnishing the Work, or responsibility for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents.

- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR is Engineer’s agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions. RPR’s dealings in matters pertaining to the Contractor’s work in progress shall in general be with Owner and Contractor. RPR’s dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor.

 - 2. *Conferences and Meetings:* Attend meetings with Contractor, Owner and TDOT, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

 - 3. *Liaison:*
 - a. Serve as Owner’s liaison with Contractor, working principally through Contractor’s superintendent, assist in providing information regarding the intent of the Contract Documents.

 - b. Serve as Owner’s liaison with Contractor when Contractor’s operations affect Owner’s on-Site operations.

 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

 - 4. *Interpretation of Contract Documents:* Report to Owner when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Owner.

5. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Owner of availability of Samples for examination.
 - c. Advise Owner and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Owner.
6. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Owner. Transmit to Contractor in writing decisions as issued by Owner.
7. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Owner in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Owner whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Owner of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
8. *Inspections, Tests, and System Startups:*
 - a. Consult with Owner in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
 - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - c. Observe, record, and report to Owner appropriate details relative to the test procedures and systems start-ups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Owner.
9. *Records:*
 - a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, Owner's clarifications and interpretations of the Contract

Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.

- b. Prepare a daily report and keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer and Owner. Daily report shall be prepared on Owner-provided Project Utility Diary (TDOT Form 8-12).
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish electronic scanned set of all RPR Project documentation to Owner.

10. Reports:

- a. Furnish to Owner periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Review and comment to Owner on proposed Change Orders, Work Change Directives, and Field Orders.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately notify Owner of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern. .

11. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Owner, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

12. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Owner prior to payment for that part of the Work.

13. *Completion:*

- a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.

- b. Participate in a final inspection in the company of Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
3. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
4. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
5. Participate in specialized field or laboratory tests or inspections conducted off-site by others.
6. Accept Shop Drawing or Sample submittals from anyone other than Contractor.