



HISTORIC  
FRANKLIN  
TENNESSEE

ITEM #13

CIC

08-27-14

# MEMORANDUM

---

August 11, 2014

**TO:** Board of Mayor and Aldermen

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

**SUBJECT:** Consideration of Amendment No. 1 to Professional Services Agreement (COF Contract No. 2012-0205) with Barge Waggoner Sumner & Cannon (BWSC) for the 11<sup>th</sup> Avenue South Improvements Project

### 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. 1 to the Professional Services Agreement (PSA) with BWSC to provide the legal description and exhibit map for an access easement on 264 Natchez Street.

### Background

During the design phase for the 11<sup>th</sup> Avenue South Improvements project the City and the Consultant decided to ask Middle Tennessee Electric Membership Corporation (MTEMC) to relocate the pole at the northeast intersection of 11<sup>th</sup> Avenue South and Natchez Street. The project was awarded and construction began in May 2014. City Staff and MTEMC representatives met onsite after construction had started and determined that it would be easier to leave the pole and build a 5 foot sidewalk around it than to move the pole itself. This would require an additional easement from the property owners of 264 Natchez Street.

### Financial Impact

BWSC has proposed a not to exceed cost of \$800.00 for the additional consulting services requested.

### Recommendation

Contingent upon document review by the City Engineer and City Attorney, staff recommends approval of the Amendment No. 1 to the Professional Services Agreement with BWSC (COF Contract No. 2012-0205) for an amount not to exceed \$800.00.

**AMENDMENT NO. 1 TO  
PROFESSIONAL ENGINEERING SERVICES  
FOR 11<sup>th</sup> AVENUE IMPROVEMENTS PROJECT  
COF Contract No. 2012-0205**

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

**WITNESSETH:**

**WHEREAS**, City and Consultant entered into a Professional Engineering Services Agreement ("Agreement") for the 11<sup>th</sup> Avenue Improvements Project (COF Contract No 2012-0205), dated the 22nd day of January 2013; and

**WHEREAS**, said Agreement stipulated that the Consultant would be paid a not to exceed fee of FORTY-SEVEN THOUSAND TWO HUNDRED THIRTY-TWO AND NO/100 DOLLARS (\$47,232.00), as authorized by the City Engineer and as detailed in the fee Schedule; and

**WHEREAS**, the City has met with Middle Tennessee Electric Membership Corporation (MTEMC) to discuss the relocation of the existing pole in the sidewalk at the intersection of 11<sup>th</sup> Avenue South and Natchez Street and has determined that leaving the pole where it is and going around the pole with a new sidewalk would be the least invasive situation to allow the project to move forward ; and

**WHEREAS**, the Consultant has provided a proposal for an increase in design services, as described in **Exhibit A** dated June 27, 2014, in the amount of **EIGHT HUNDRED AND NO/100 DOLLARS (\$800.00)**; and

**WHEREAS**, the City has reviewed the Proposal and desires to enter into an agreement for the Project as proposed.

**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 June 27, 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 **EIGHT HUNDRED AND NO/100 DOLLARS (\$800.00)**.

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 January 22, 2013, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

The CITY OF FRANKLIN, TENNESSEE

BARGE WAGGONER  
SUMNER AND CANNON

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

**BARGE, WAGGONER, SUMNER, AND CANNON, INC.**

Project: 11th Avenue Water and Sewer Improvements

Project Description: Prepare Exhibit & Description for Walkway & Public Access Easement

**I. PROFESSIONAL SERVICES: BWSC agrees to perform the following additional services under this Addendum:**

Surveying Services in connection with preparation of an Exhibit and Description for a Walkway and Public Access Easement at 264 Natchez Street, Franklin, Tennessee.

**II. COMPENSATION: The compensation to be paid to BWSC for providing the requested additional services shall be:**

<input type="checkbox"/>	Cost Plus in accordance with the rate schedule attached as Exhibit "A" including applicable reimbursables.		
<input type="checkbox"/>	Estimated Fee	\$ Amount	or Maximum Fee \$ Amount
<input checked="" type="checkbox"/>	Lump Sum	\$ 800.00	
<input type="checkbox"/>	Percentage of Construction Cost	Enter %	Estimated Fee \$ Amount
<input type="checkbox"/>	Other (specify)		