



09-09-14

ITEM #37

BOMA

MEMORANDUM

August 11, 2014

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator
David Parker, P.E., City Engineer/CIP Executive
Paul Holzen, P.E., Director of Engineering
Jonathan Marston, P.E., Staff Engineer III

SUBJECT: Consideration of Amendment No. 2 to the Professional Services Agreement (COF Contract No. 2012-0076) with Sullivan Engineering, Inc. for Additional Construction Administration and Inspection Services for the McEwen Drive Temporary Connector Project in an amount not to exceed \$27,100.00.

Purpose

The purpose of this memo is to provide information to the Board of Mayor and Aldermen (BOMA) to consider Amendment No. 2 to the Professional Services Agreement (PSA) with Sullivan Engineering, Inc. (SEI) to provide additional construction administration and inspection services for the McEwen Drive Temporary Connector Project

Background

On May 8, 2012 the BOMA approved a PSA (COF Contract No. 2012-0076) with SEI, in an amount not to exceed \$185,830, for the design of the McEwen Drive Temporary Connector Project. Subsequently, on October 23, 2012, the BOMA approved Amendment No. 1 to the PSA with SEI, in an amount not to exceed \$95,000, for construction administration and inspection services during the construction of the McEwen Drive Temporary Connector Project. A notice to proceed, with an effective date of January 2, 2013, was issued in December 2012. Construction was originally schedule to be substantially complete by September 20, 2013, with a final payment date of October 4, 2013. Unfortunately, construction time on this project was extended, due to inclement weather conditions. Substantial completion of this project was not reached until November 22, 2013, which represents an increase in construction time of 63 calendar days. Following substantial completion, there was a dispute about the amount of material removed from the project site. This dispute was not settled until July 2014, approximately seven (7) months after final completion.

Between November 2013 and July 2014, significant staff and consultant time was expended in an attempt to resolve the contract dispute. Due to the increased time of construction and the effort needed to resolve the contract dispute, SEI has requested Amendment No. 2, in the amount of \$27,100 to cover their additional construction administration and inspection services, including those of their sub-consultants.

Financial Impact

The cost, as negotiated with SEI, for additional construction administration and inspection services is an amount not to exceed \$23,100.00. The actual construction costs for this project were approximately \$177,000 lower than the original contract amount. Therefore, the funding for Amendment No. 2 can be obtained from a portion of the construction cost savings.

Recommendation

Contingent upon document review by the City Engineer and City Attorney, staff recommends approval of Amendment No. 2 to PSA with SEI (COF Contract No. 2012-0076) in an amount not to exceed \$27,100.00.

**AMENDMENT NO. 2 TO
PROFESSIONAL SERVICES AGREEMENT
FOR MCEWEN DRIVE TEMPORARY CONNECTOR
COF Contract No. 2012-0076**

THIS AMENDMENT is made and entered into on this the ___ day of _____, 2014, by and between the **City of Franklin, Tennessee** ("City") and **SULLIVAN ENGINEERING, INC. (SEI)** ("Consultant").

WITNESSETH:

WHEREAS, the City and the Consultant entered into a Professional Services Agreement ("Agreement") entitled **McEwen Drive Temporary Connector Design (COF Contract No. 2012-0076)**, dated the 8th Day of May, 2012; and

WHEREAS, said Agreement stipulated that the Consultant would be paid a not to exceed fee of **ONE HUNDRED EIGHTY-FIVE THOUSAND EIGHT HUNDRED THIRTY AND NO/100 DOLLARS (\$185,830.00)** as authorized by the City Engineer and as detailed in the Fee Schedule; and

WHEREAS, the City approved Amendment No. 1 (10/23/2012) to COF Contract No. 2012-0076 for Construction Administration and Inspection Services ("CEI Services") at an additional not to exceed cost of **NINTEY-FIVE THOUSAND AND NO/100 DOLLARS (\$95,000.00)**; and

WHEREAS, the City has negotiated with the Consultant additional CEI Services as described in **Exhibit A**, dated August 12, 2014, for an additional cost of **TWENTY-SEVEN THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$27,100.00)**.

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 additional CEI Services as described in **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 additional CEI Services required in an amount not to exceed **TWENTY-SEVEN THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$27,100.00)**.

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

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 May 8th, 2012, and Amendment No. 1 dated October 23, 2012, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

CITY OF FRANKLIN, TENNESSEE

**SULLIVAN ENGINEERING,
INC.**

By: _____
Dr. Ken Moore
Mayor
Date: _____

By: _____
Print: _____
Title: _____
Date: _____

Attest:

Eric S. Stuckey
City Administrator/Recorder
Date: _____

Approved as to form:

Shauna R. Billingsley, City Attorney



SULLIVAN ENGINEERING, INC.
317 MAIN STREET, SUITE 201
FRANKLIN, TN. 37064
(615) 642-5822

August 12, 2014

Mr. Paul Holzen, P. E.
City of Franklin Director of Engineering
109 3rd Avenue South
P.O. Box 305
Franklin, TN 37064

RE: McEwen Drive – Temporary Connector, Construction Engineering Inspection (CEI)
From: West of Cool Springs Blvd.
To: 1,400+/- L.F. West of Players Mill Road
Project Length 1,850 +/- L.F. (Includes 500+/- L.F. of Side Roads)
City of Franklin, Tennessee
Williamson County

Dear Paul,

At the time, Sullivan Engineering, Inc. (SEI) entered into the McEwen Temporary Connector CEI services agreement the construction contractor was unknown and therefore hard to predict the amount of time that would be required for supplemental instructions and field visits. If this had been a full time CEI agreement, a budget based on a 40-hour week would have been utilized for the duration of the contract. However, a budget for this project was established based on partial oversight by the CEI team. Therefore, establishment of a budget based on partial CEI services requires some guess work by all parties, drawing from experience of project similar in nature constructed by an average contractor. Although best efforts were made to create, a budget fair to all parties when dealing with unknowns or variables it is still just an estimate of probable cost.

In this case not knowing the contractor turned out to be a major factor. Parkes Companies was awarded the construction bid and although they did the previous section of McEwen, which was a fulltime CEI agreement, it is still difficult to determine the appropriate level of oversight required. However, as construction activities progressed it became evident more time would be required than anticipated. Seeing this, the CEI team and City Staff, tried to stretch the budget by eliminating some of the testing services on items such as curb and sidewalks, while focusing more on structural and field directed items.

McEwen Temporary Connector was a straightforward project consisting of a new alignment with connections to existing roadways on both ends, only one of which involved traffic interaction. Utilities often create issues with construction time lines, but in this case being a new alignment this

EXHIBIT A

was minimal and resolved in a timely manner by MTEMC and AT&T.

A "Notice to Proceed" was issued on January 2, 2013, for construction of McEwen Temporary Connector, allowing the major portion of the work to be underway during what is considered prime construction season. The intent was to have the project completed prior to the opening of school in August 2013 but the contractor did not have until October 4, 2013 per the contract. As we approached the August objective it was evident completion was not going to be achieved. However, we still anticipated an October 2013 completion. As the project progressed, it became evident the October 2013 date was not going to be satisfied, which required the City to enter into Change Order #1 extending the contract to December 13, 2013. In an additional effort to assist the contractor during this period, the City agreed to close the roadway at the eastern termini, for two weekends in an effort to bring this project to closure. Although, the City agreed to close the road at the request of the contractor, the contractor offered no concessions to the City for this benefit.

As the scheduled completion of December 13, 2013 approached, it once again became evident the roadway was not going to be completed on time. However, with the connection made on the eastern end traffic had to be routed onto the new roadway. This now created two issues, the first of which was a direct impact to the CEI's survey team in preparing the as-built survey. The original scope of services was to perform this work prior to opening the roadway to traffic, which now had to be performed under traffic, which requires additional time and safety concerns.

After allowing traffic onto the new roadway, City Staff observed traffic patterns at the roundabout, on many occasions. Based on these observations, Staff had concerns that once fully open to traffic; the roundabout would not flow as smoothly as desired creating delays. Prior to the construction of this project, the city had a study, which indicated an additional right turn lane would be required onto Cool springs Blvd. from McEwen (west to north movement). Since the CEI survey team was in the process of collecting as-built topographic data, obtain City staff requested additional survey services of topographic data, for design of an anticipated right turn lane. A budget increase was not requested at this time, as all parties felt the additional services could be absorbed into the original budget based on earlier decisions to trim back on testing services.

As we approached, closure of the project several issues of disagreement on compensation as requested by the contractor ensued. The two major concerns was the concrete truck apron within the roundabout and total volume of excavation required for the project. After much discussion, correspondence and many field visits the concrete truck apron was resolved. However, the disagreement on excavation has been ongoing since the first of the year and has only been resolved in the past couple of weeks, requiring time involvements from the CEI team and City Staff. Since the first of the year, the CEI team has had to prepare a multitude of engineering calculations, reports, meetings, emails, phone conversations, field visits, and survey services. The most recent meeting was with City Staff on Friday June 6th to review data and prepare an additional exhibit for an upcoming meeting with the contractor. After that point to reduce cost City Staff has handled all correspondence and meetings with the General Contractor, leaving the CEI Team to handle final inspection, punch list, pay application, and Change Order to bring closure to the contract.

As you can see from the short project narrative above the estimated time involvement was low

EXHIBIT A

as related to Parkes Companies, which required considerable more involvement from the CEI team than would be expected from other contractors on a project of similar nature. The CEI team entered into the original agreement with the City based on contract duration of six (6) months. We are now ten (10) months past the original scheduled completion and eight (8) months past the revised contract completion. This additional time required combined with the additional survey request has placed the CEI team in a position that a request for additional compensation to the original contract cannot be avoided.

SUMMARY OF SUPPLEMENTAL SERVICES
(Supplemental Services based on Agreement 2012-0076, \$95,000)

| <u>SUPPLEMENTAL SERVICES "A" COMPLETED</u> | | | |
|---|--------------------|--------------------|--------------------|
| TASK | Fee Complete | Previous Billed | Amount Due |
| RPM Transportation (Supplemental Roundabout Sign/Markings, Supplemental signing and pavement marking construction coordination) | \$3,048.71 | \$3,048.71 | \$0.00 |
| Survey (Supplemental Survey, Right Turn Lane, Pavement Overlay) | \$10,100.00 | \$10,100.00 | \$0.00 |
| Survey (Verification of Center Line Grade) | \$1,000.00 | \$0.00 | \$1,000.00 |
| Survey (Hor/Vert review and verification, earthwork calculations, model comparison and analysis) | \$12,000.00 | \$0.00 | \$12,000.00 |
| TERRACON | \$460.54 | \$0.00 | \$460.54 |
| Total | \$25,609.25 | \$13,148.71 | \$13,460.54 |

| <u>SUPPLEMENTAL SERVICES "B" COMPLETED</u> | | | | |
|---|----------|-----------------|--------------|--------------------|
| TASK | Base Fee | Hours Completed | Total Billed | Amount Due |
| Professional Engineer | \$151.14 | 39.00 | \$5,894.46 | \$5,894.46 |
| Staff Assoc/Project Coordinator | \$112.06 | 56.00 | \$6,275.36 | \$6,275.36 |
| Roadway Designer II | \$95.84 | 10.00 | \$958.40 | \$958.40 |
| Cadd Tech | \$85.53 | 3.00 | \$256.59 | \$256.59 |
| Stormwater Inspection | \$85.00 | 0.00 | \$0.00 | \$0.00 |
| Total | | | | \$13,384.31 |

| <u>REIMBURSABLES</u> | | | | |
|-----------------------------|----------|------------|------------------|------------|
| | Base Fee | % Complete | Amount Completed | Amount Due |
| | | | | |

EXHIBIT A

**Amendment No. 2
COF Contract No. 2012-0076**

| | | | Quantity | Amount Due |
|---|---------|----------|----------|-----------------|
| Fax | \$0.25 | Page | 0 | \$0.00 |
| 8" x 11" Copies/Impressions | \$0.25 | Page | 0 | \$0.00 |
| 11"x17" Copies/Impression | \$0.50 | Page | 0 | \$0.00 |
| 24" x 36" Prints | \$0.50 | Sq. Ft. | 0 | \$0.00 |
| Minimum setup time | \$10.00 | Per Plot | 0 | \$0.00 |
| Reproducible Copies (24"x36" mylar) | \$5.00 | Sq. Ft. | 0 | \$0.00 |
| Reproducible B/W Copies (24"x36" Paper) | \$3.00 | Sq. Ft. | 0 | \$0.00 |
| Reproducible Color Copies (24"x36" Paper) | \$4.00 | Sq. Ft. | 0 | \$0.00 |
| | | | | |
| Mileage (auto) | \$0.54 | Mile | 0 | \$0.00 |
| | | | | |
| TDEC Fees | | | | \$250.00 |
| | | | | |
| | | | | |
| Total | | | | \$250.00 |

| | |
|------------------------------------|--------------------|
| SUPPLEMENT AMOUNT REQUESTED | \$27,094.85 |
|------------------------------------|--------------------|

I hope this proposal meets with your approval. Please contact me at your convenience after you have had a chance to review this proposal so we can discuss and answer in questions.

Sincerely,
Sullivan Engineering, Inc.

Paul V. Collins, Jr.

Paul V. Collins, Jr.
Vice President

Exhibits

cc: Mr. Richard Sullivan, PE, Sullivan Engineering, Inc.