

**COF CONTRACT 2012-0151  
CHANGE ORDER NO. 2**

09-09-14

**ITEM #38**  
BOMA

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**DATE OF ISSUANCE:** August 8, 2014

**EFFECTIVE DATE:** \_\_\_\_\_, 2014

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**OWNER:** City of Franklin, TN.

Attn: Paul Holzen, PE, Director of Engineering  
109 3<sup>rd</sup> Avenue South  
Franklin, TN 37064

**CONTRACTOR:** The Parkes Companies, Inc.

Attn: Trey Evans  
105 Reynolds Drive  
Franklin, TN 37064

**Contract:** General Construction

**Project:** McEwen Drive Temporary Connector

City of Franklin Construction Project No. 2012-0151  
Sullivan Engineering Project No. 12-004

OWNER's Contract No. 2011-0151

ENGINEER's Contract No. 12-004

ENGINEER: Mr. Richard Sullivan, PE, Sullivan Engineering, Inc.  
317 Main Street, Suite 201, Franklin, TN 37064

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You are directed to proceed promptly with the following change(s):

**Description:**

Change Order 1, required this project to be completed on or before December 13, 2013 and defined as "*Substantial Completion shall be on or before November 22, 2013 and Final completion on or before December 13, 2013. Substantial Completion shall be defined as having traffic relocated from the existing roadway to the new alignment. Final Completion shall be identified as any remaining work associated with the cul-de-sac on existing McEwen Drive*". After the scheduled December 13<sup>th</sup> Final Completion and ready for payment date, the contractor worked on the grading, drainage, paving and pavement markings of the Cul-De-Sac, site stabilization and punch list items noted at the January 7, 2014 Substantial Completion field review. Along with the aforementioned, another item prohibiting closure of the construction contract was a discrepancy in 7,230 cubic yards of excavation (Item #203-01 Road and Drainage Excavation (Unclassified)) at an additional cost of \$59,864.40 which staff has agreed to pay.

As of the date of this Change Order, Parkes Companies, Inc has not requested an extension of time or waiver of penalties per the contract documents. Section 4.03 of the Revised Standard Form Of Agreement Between Owner And Contractor On The Basis Of Stipulated Price, allows for liquidated damages to be assessed by the Owner as follows:

*4.03 Liquidated Damages*

*A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the*

## Change Order No. 2

*General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER \$500.00 for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER \$1,000.00 for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.*

*B. The CONTRACTOR understands that any penalty, fine, enforcement or other type of monetary judgment levied on any and all firms, agencies or individuals while under contract with the City of Franklin, OWNER, is the responsibility of the CONTRACTOR and will not be paid or reimbursed by the City of Franklin, OWNER.*

*C. Bidder accepts the provisions of the Agreement as to liquidated damages as penalty in the event of failure to complete the Work within the times specified above, which shall be stated in the Agreement.*

City Engineering staff has recommended against assessment of damages which would be from December 13, 2013 to July 31, 2014 or a total of 224 days at a rate of \$1,000/day for a total of \$224,000.

As a result of some concerns related to the asphalt paving the Parkes companies, Inc has agreed to provide an extended warranty, effective January 16, 2014 for a period of two (2) years. A copy of the agreement is attached to this document.

### **Reason for Change Order:**

Closure of construction contract 2012-0151.

### **Attachments:** (List documents supporting change)

Parkes Companies, Inc, Application for Payment 14, dated August 8, 2014

Release of Liens, Parkes Companies, Inc, inclusive of all Sub-contractors and suppliers.

Extended Asphalt Warranty, dated January 16, 2014

**Change Order No. 2**

CHANGE IN CONTRACT PRICE:
Original Contract Price  \$1,982,491.61
Net <del>increase</del> (Decrease) from previous Change Orders No. -0- to -0-:  \$0.00
Contract Price prior to this Change Order:  \$1,982,491.61
Net <del>increase</del> (decrease) of this Change Order:  \$177,719.12
Contract Price with all approved Change Orders:  \$1,804,772.49

CHANGE IN CONTRACT TIMES:
Original Contract Times: Substantial Completion: <u>September 20, 2013</u> Ready for final payment: <u>October 4, 2013</u> (days or dates)
Net change from previous Change Orders No. -0- to No. -1-: Substantial Completion: <u>- 63 -</u> Ready for final payment: <u>- 70 -</u> (days)
Contract Times prior to this Change Order: Substantial Completion: <u>November 22, 2013</u> Ready for final payment: <u>December 13, 2013</u> (days or dates)
Net increase ( <del>decrease</del> ) this Change Order: Substantial Completion: <u>-0-</u> Ready for final payment: <u>-0-</u> (days )
Contract Times with all approved Change Orders: Substantial Completion: <u>November 22, 2013</u> Ready for final payment: <u>December 13, 2013</u> (days or dates)

RECOMMENDED:

APPROVED:

ACCEPTED:

By: *Paul Collins*

By: \_\_\_\_\_

By: \_\_\_\_\_

ENGINEER (Authorized Signature)

OWNER (Authorized Signature)

CONTRACTOR (Authorized Signature)

Date: August 8, 2014

Date: \_\_\_\_\_

Date: \_\_\_\_\_





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 Change Order No. 2 (FINAL) to the McEwen Drive Temporary Connector Construction Contract (COF Contract No. 2012-0151) with The Parkes Companies, Inc. for a DECREASE in the amount of \$177,719.12

**Purpose**

The purpose of this memo is to provide information to the Board of Mayor and Aldermen (BOMA) to consider Change Order No. 2 (FINAL) to the McEwen Drive Temporary Connector construction contract (COF Contract No. 2012-0151) with The Parkes Companies, Inc. (Parkes) for a DECREASE in the amount of \$177,719.12.

**Background**

On October 23, 2012 the BOMA approved a contract (COF Contract No. 2012-0151) with Parkes, in the amount of \$1,982,491.61, for the construction of the McEwen Drive Temporary Connector. Subsequently, on November 12, 2013, the BOMA approved Change Order No. 1 to the contract for a time extension. The project reached substantial completion on November 22, 2013. 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. This project is now complete and ready for final closeout.

**Financial Impact**

The final cost for construction of the McEwen Drive Temporary Connector is \$1,804,772.49, which represents a DECREASE of \$177,719.12 to the original contract amount of \$1,982,491.61.

**Recommendation**

Staff recommends approval of Change Order No. 2 (FINAL) to the McEwen Drive Temporary Connector construction contract (COF Contract No. 2012-0076) with Parkes for a DECREASE in the amount of \$177,719.12.