



MEMORANDUM

June 7, 2010

TO: Board of Mayor and Aldermen

FROM: David Parker, City Engineer/CIP Executive
Eric Stuckey, City Administrator

SUBJECT: **Amendment No 1 to Smith Seckman Reid, Inc (SSR)
Professional Services Agreement for Maintenance of
The Stream Gauging Stations**

Purpose

This memo is to provide the information to the Franklin Board of Mayor and Aldermen (BOMA) to enable them to make an informed decision as to the proposed Amendment No 1 to the SSR Professional Services Agreement for the Maintenance of the City's Stream Gauging Stations.

Background

On September 22, 2009, the City entered into an Agreement with SSR for the Operation & Maintenance of the City's Stream Gauging Stations. Due to the recent flooding event (May 1st – 3rd), we have experienced extensive damage to a number of our stations and are in need to repair or replace the equipment in these stations. The proposed Amendment No 1 is to authorize SSR to do this work under their existing Agreement.

Financial Impact

The total cost for repair/replacement of the Stream Gauging stations damaged by the flood is estimated to be \$53,360 for equipment and \$23,894 for installation (Total Estimate - \$77,252). We expect that the cost of this work will be reimbursed through the various agencies that cover costs such as this due to a flooding event. What cost that is not covered will be paid from the Stormwater Fund – Reserves.

Recommendation

Staff recommends approval of Amendment No 1 to the September 22, 2009 Operation & Maintenance Agreement with Smith Seckman Reid, Inc. at an estimated cost of \$77,252.

**AMENDMENT NO. 1 TO
PROFESSIONAL SERVICES AGREEMENT
FOR STREAM GAUGING STATIONS OPERATION &
MAINTENANCE (O&M)
COF Contract No. 2009-0055**

THIS AMENDMENT is made and entered into on this the 22nd day of June, 2010, by and between the **City of Franklin, Tennessee** ("City") and **Smith Seckman Reid, Inc. (SSR)** ("Consultant").

WITNESSETH:

WHEREAS, City and Consultant entered into a Professional Services Agreement entitled Stream Gauging Stations Operation & Maintenance (O&M), dated the 22nd day of September, 2009; and

WHEREAS, The City needs to have its Stream Gauging Stations equipment repaired or replaced due to flooding of same during the May 1st - 3rd flood;

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 to provide the Scope of Services as established in **Exhibit A** of 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 repairing or replacing the equipment as listed in Exhibit A estimated to be **\$53,720.00** and for the removal and installation of said equipment a fee estimated to be **\$23,894.00** based on the actual hours worked. **Total cost for this Amendment is estimated to be \$77,252.00.**

City reserves the right to issue any payments jointly to the Consultant and sub-Consultant(s) when the City receives information that the Consultant has not paid its sub-Consultants.

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 Agreement 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 September 22, 2009, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

The CITY OF FRANKLIN, TENNESSEE

SMITH SECKMAN REID, INC.

By: _____
John C. Schroer
Mayor
Date: _____

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

Attest:

Eric S. Stuckey
City Administrator
Date: _____

Approved as to form:

Shauna R. Billingsley
City Attorney