



HISTORIC  
FRANKLIN  
TENNESSEE

ITEM #13  
WRKS 11/22/2011

## MEMORANDUM

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November 7, 2011

TO: The Board of Mayor and Aldermen

FROM: Eric S. Stuckey, City Administrator *Eric*  
David Parker, P.E., City Engineer  
Paul Holzen, P.E., Director of Engineering  
Jonathan Marston, P.E., Staff Engineer II

SUBJECT: SR 252 (Wilson Pike) & McEwen Drive Intersection Improvements  
City of Franklin Contract #: COF 2010-0152  
Amendment No. 1

### **Purpose**

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider approval of Amendment No. 1 for the Professional Services Agreement (PSA) for SR 252 (Wilson Pike) & McEwen Drive Intersection Improvements Project

### **Background**

BOMA approved the PSA for the above referenced project with Clinard Engineering Associates, LLC on October 30, 2010 in an amount not to exceed \$180,000. Since the beginning of this project, Clinard Engineering Associates, LLC has completed a business merger with Alfred Benesch & Company. The newly merged company, operating under the name of Alfred Benesch & Company wishes to complete the project as per the original agreement. It is necessary to amend the agreement to reflect the new name of the company contracted for this work.

### **Financial Impact**

No additional financial impact is expected.

### **Recommendation**

Staff recommends approval of Amendment 1 to COF Contract No. 2010-0152.

**AMENDMENT NO. 1 TO  
PROFESSIONAL SERVICES AGREEMENT  
FOR SR 252 (WILSON PIKE) & McEWEN DRIVE  
INTERSECTION IMPROVEMENTS  
COF Contract No 2010-0152**

**THIS AMENDMENT** is made and entered into on this the \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the **City of Franklin, Tennessee** ("City") and **Alfred Benesch & Company** ("Consultant").

**WITNESSETH:**

**WHEREAS**, the City and Clinard Engineering Associates, LLC entered into a Professional Services Agreement ("Agreement") entitled SR 252 (Wilson Pike) & McEwen Drive Intersection Improvements (COF Contract No. 2010-0152) ("Project"), approved by the Franklin Board of Mayor and Aldermen (BOMA) on the 28<sup>th</sup> day of October, 2010; and

**WHEREAS**, Clinard Engineering Associates, LLC recently completed a business merger with the Consultant; and

**WHEREAS**, the Consultant accepts all benefits and liabilities to complete the Project, as per the original Agreement (COF Contract No 2010-0152) approved by BOMA on October 28, 2010, as attached as Exhibit A and as evidenced by Consultant's signature on Exhibit A; and

**WHEREAS**, the City consents to the assignment of Contract 2010-0152 pursuant to paragraph 3.3.

**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 engineering and related technical services for the Project in accordance with the Scope of Services and agrees to be bound by the Terms and Conditions of the Professional Services Agreement all of which are found in Exhibit A of the Agreement approved by BOMA dated October 28, 2010.
3. City's Responsibilities and Duties. City shall pay Consultant for the services performed for the Project in accordance with the Fee Schedule found in

Attachment A in the amount not to exceed **One Hundred Eighty Thousand and No/100 Dollars (\$180,000.00)**.

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.

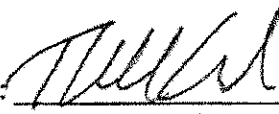
All other provisions of the Agreement approved by BOMA dated October 28, 2010, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

The CITY OF FRANKLIN, TENNESSEE

ALFRED BENESCH &  
COMPANY

By: \_\_\_\_\_  
Dr. Ken Moore  
Mayor  
Date: \_\_\_\_\_

By:   
Print: THOMAS M. CLINARD  
Title: VICE PRESIDENT  
Date: 11/8/11

Attest:

\_\_\_\_\_  
Eric S. Stuckey  
City Administrator  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Shauna R. Billingsley, City Attorney