



## MEMORANDUM

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April 3, 2012

TO: The Board of Mayor and Aldermen

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

SUBJECT: SR 252 (Wilson Pike) and McEwen Drive Intersection Improvements  
City of Franklin Contract #: COF 2010-0152  
Amendment No. 3

### **Purpose**

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider approval of Amendment No. 3 for the Professional Services Agreement (PSA) for SR 252 (Wilson Pike) and McEwen Drive Intersection Improvements Project

### **Background**

BOMA approved the PSA for the above referenced project with Clinard Engineering Associates, LLC on October 28, 2010 in an amount not to exceed \$180,000. On December 13, 2011, BOMA approved Amendment No. 1 to the PSA, which allows Alfred Benesch & Company to complete the project per the original agreement with Clinard Engineering Associates, LLC. On March 13, 2012, BOMA approved Amendment No. 2 to the PSA, which allows for the payment of reimbursable items such as permits, review fees, and various other fees.

This amendment is meant to cover several additional design items that are outside the scope of the original agreement. Specifically, these additional items include: design and permitting for relocation of existing City of Franklin sanitary sewer force main, addition of Intelligent Transportation System (ITS) conduits to the bridge structure for future use, and design of shared access driveway and associated signal modifications for property owners whose existing driveways are in direct conflict with the proposed traffic signal. All items included with this proposed amendment are listed on Exhibit A.

### **Financial Impact**

The cost, as negotiated with Alfred Benesch & Company, for the additional services is an amount not to exceed \$10,400.

### **Recommendation**

Staff recommends approval of Amendment No. 3 to the Professional Services Agreement with Alfred Benesch & Company (COF Contract No. 2010-0152) for an amount not to exceed \$10,400.

**AMENDMENT NO. 3 TO  
PROFESSIONAL SERVICES AGREEMENT  
FOR ADDITIONAL SURVEY AND DESIGN SERVICES  
2010-0152**

**THIS AMENDMENT** is made and entered into on this the \_\_\_ day of \_\_\_\_\_, 2012, by and between the **City of Franklin, Tennessee** ("City") and **Alfred Benesch & Company** ("Consultant").

**WITNESSETH:**

**WHEREAS**, the City and the Consultant entered into a Professional Services Agreement ("Agreement") entitled Professional Services Agreement COF Contract No. 2010-0152 dated October 28, 2010; and

**WHEREAS**, said Agreement stipulated that the Consultant would be paid a not to exceed fee of \$180,000.00 as authorized by the City Engineer and as detailed in the Fee Schedule; and

**WHEREAS**, the City has negotiated with the Consultant an increase in the design services, as described in Exhibit A - Proposal For Engineering Services; Sewer Force Main Relocation, Driveway Modification at Signal, Signal Modifications, of the Agreement in the amount of **Ten Thousand Four Hundred and No/100 Dollars (\$10,400.00)**

**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 services as provided for in Exhibit A - Sewer Force Main Relocation, Driveway Modifications at Signal, and Signal Modifications.
3. City's Responsibilities and Duties. City shall pay Consultant for the cost of the additional Professional Services required in an amount not to exceed **Ten Thousand Four Hundred and No/100 Dollars (\$10,400.00)**

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 October 28, 2010 are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

**CITY OF FRANKLIN, TENNESSEE**

**Alfred Benesch & Company**

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

# Exhibit A



Alfred Benesch & Company  
109 Westpark Drive, Suite 440  
Brentwood, Tennessee 37027  
www.benesch.com  
P 615-370-6079  
F 615-627-4066

March 28, 2012

Mr. Paul Holzen, P.E.  
Interim Engineering Director  
City of Franklin  
109 Third Avenue South  
Franklin, Tennessee 37064

**Subject: Proposal For Engineering Services  
Sewer Force Main Relocation  
Driveway Modifications at Signal  
Signal Modifications at Driveway  
SR-252 (Wilson Pike) & McEwen Drive Intersection Improvement  
City of Franklin, Tennessee**

Dear Mr. Holzen:

*Alfred Benesch & Company* is pleased to have the opportunity to submit the professional services proposal to provide the engineering services for the relocation of the Sewer Force Main on the subject project. Hethcoat & Davis will be a sub consultant to Benesch and will provide the design for the sewer. Benesch will provide the structural detailing on the bridge rail to include the Anchor Rods and hangers for the new line. The Scope of Work will include the following:

- Prepare Engineer's Opinion of Cost for sewer relocation
- Prepare estimated quantities of utility to be relocated in bid package
- Prepare drawings showing all force main improvements to be made to accomplish the relocation
- Preparation of technical specification utilizing City of Franklin Standard Specifications
- Obtain Permit approval from TDEC, Division of Water Pollution Control where applicable
- Structural detailing and specifications for inclusion of Anchor Rods within the new bridge parapet to support the sewer line
- Addition of 2-3" conduits to the existing bridge for future City of Franklin communication lines
- Modification of 3 driveways east of the intersection to provide better access to the signal
- Adjustments to the proposed signals to accommodate the new driveways

Benesch will provide the scope of services identified and proposes a <sup>not to exceed fee</sup> ~~cost plus fixed fee~~ of \$10,400.00.

Paul Holzen, PE  
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If you have any questions or need any additional information, please feel free to contact me at 615.370.6079. We look forward to assisting the City of Franklin on this important project.

Sincerely,

A handwritten signature in black ink that reads "Thomas M. Clinard, P.E." in a cursive style.

Thomas M. Clinard, P.E.  
Vice President  
Tennessee Division Manager

Copy: Phil Clinard, ABC  
Sammie McCoy, ABC  
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