

**AMENDMENT NO. 3 TO
PROFESSIONAL SERVICES AGREEMENT
FOR EAST McEWEN DRIVE PHASE 4 IMPROVEMENTS -
FINAL DESIGN
COF Contract No. 2015-0052**

THIS AMENDMENT is made and entered into on this the ____ day of _____, 2020, by and between the **City of Franklin, Tennessee** ("City") and **Sullivan Engineering, Inc.** ("Consultant").

WITNESSETH:

WHEREAS, City and Consultant entered into a Professional Services Agreement ("Agreement") entitled East McEwen Drive Phase 4 Improvements - Final Design, dated the 24 day of March 2015; and

WHEREAS, said Agreement stipulated that the Consultant would be paid a not-to-exceed fee of Seven Hundred Thirteen Thousand and No/100 Dollars (\$713,000.00), as authorized by the City Engineer and as detailed in the Fee Schedule; and

WHEREAS, on April 11, 2017, the Board of Mayor and Aldermen approved Amendment No. 1 to the Agreement with the Consultant for additional engineering services in the amount not-to-exceed One Hundred Twenty-One Thousand Nine Hundred Ninety-Eight and 65/100 Dollars (\$121,998.65); and

WHEREAS, on April 24, 2018, the Board of Mayor and Aldermen approved Amendment No. 2 to the Agreement with the Consultant for additional engineering services in the amount not-to-exceed Two Hundred Fifty-Five Thousand Five Hundred and No/100 Dollars (\$255,500.00); and

WHEREAS, the City and Consultant realize the need for additional design work for the Project due to circumstances beyond the control of the Consultant; and

WHEREAS, the Consultant has provided a Proposal for an increase in engineering services, as described in Exhibit A dated February 6, 2020, in the amount of **EIGHTY-TWO THOUSAND FIVE HUNDRED EIGHTY-NINE AND 32/100 DOLLARS (\$82,589.32)**; and

WHEREAS, the City has reviewed the Proposal and desires to enter into an agreement for the Project as proposed.

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 as proposed in their February 6, 2020, letter of proposal (**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 work as described in Exhibit A an amount not to exceed **EIGHTY-TWO THOUSAND FIVE HUNDRED EIGHTY-NINE AND 32/100 DOLLARS (\$82,589.32)**.

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

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 March 24, 2015, Amendment 1 dated April 11, 2017, and Amendment 2 dated April 24, 2018, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

The CITY OF FRANKLIN, TENNESSEE

Sullivan Engineering, Inc.

By: _____
Dr. Ken Moore
Mayor
Date: _____

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

Attest:

Eric S. Stuckey
City Administrator
Date: _____

Approved as to form:

Maricruz R. Fincher, Staff Attorney



SULLIVAN ENGINEERING, INC.
 317 Main Street, Suite 201
 Franklin, TN 37064

February 6, 2020

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

RE: East McEwen Drive Phase 4 Improvements
 From: 800' +/- east of Cool Springs Blvd.
 To: Wilson Pike (SR-252)
 Total Project Length: 1.5 +/- L.M. (Does not include 0.8 L.M. of Side Roads)
 City of Franklin, Tennessee
 Williamson County
 COF Contract No. 2015-0052
 SEI # 15-003

Dear Paul,

Additional Services For TDOT

As you are aware the original plans and contract was for McEwen Drive Phase IV as not prepared for TDOT or Federal participation. Below are the items, as agreed that have been completed or still needing to be completed to prepare this project for next submission to TDOT.

ADDITIONAL OF ENGINEERING SERVICES

Task	Professional Engineer II	Staff Assoc/Proj Coordinator	Roadway Designer II	CADD Technician
<u>Rate/Hour</u>	<u>\$179.97</u>	<u>\$133.42</u>	<u>\$114.11</u>	<u>\$101.84</u>
Revisions for TDOT	27	37	65	73
Revision to Cross-section for Utilities	48	4	0	12
Redesign for Bike Path	14	8	0	8
Redesign for 2:1 Slopes	80	12	0	12
Extra Work to Produce Drainage Report	58	0	4	8
Revise Property Acquisition Description & Exhibits (Related to Utility Changes)	0	8	30	10

ADDITIONAL OF ENGINEERING SERVICES

Task	Professional Engineer II	Staff Assoc/Proj Coordinator	Roadway Designer II	CADD Technician
Revise Electrical Plans, Notes, Details and Quantities	10	0	0	8
Revisions for Sidewalk and Parapet	20	8	0	14
<u>Total Hours</u>	257	77	99	145
<u>Total Fee/Class</u>	\$46,252.29	\$10,273.34	\$11,296.89	\$14,766.80
<u>Total Fee</u>	\$82,589.32			

<u>EXCLUSIONS to TDOT Comments</u>			
1	Generate City response letter to TDOT	10	Additional Geotechnical Field or Office services not requested prior to January 1, 2020
2	Re-profile and design of the bike path section that departs from the road and ties into the existing. A Multimodal Design deviation form was submitted to TDOT on 12/2/19 by City Staff.	11	Additional structural design services not requested prior to January 1, 2020
3	Preparation and submittal of a TDOT Transportation Management Plan.	12	Additional utility coordination, inclusive of CSX Transportation and Roadway Lighting
4	Additional updates to traffic data and diagrams	13	Signalization design or coordination services
5	Additional updates to TDOT General/Special/Traffic/Erosion notes, standard drawings and item numbers.	14	Additional hydraulic studies and reports not requested prior to January 1, 2020
6	All design modifications related to the TDOT's new RD11 series drawings.	15	Environmental studies inclusive or permits preparation, fees and submittals
7	Any work associated with acceptance of proprietary items desired for use by the City of Franklin.	16	Construction cost analysis preparation and analysis

8	Modification of design documents to reflect the current TDOT standard of 1.5% cross slope on sidewalks or graded areas directly behind the curb. City Response: Labeling will be noted as 0.020%, max (1.5% min) will be added to the Typical Sections. Reference elevations and cross-sections will not be changed.	17	Property acquisition revisions
9	Additional TDOT or City review comments not received prior to January 1, 2020	18	Questions, clarifications and modifications of design documents not received prior to January 1, 2020

COMPENSATION

SEI's fee is developed on an hourly basis of time required by various personal to research and implement modifications requested by City Staff and TDOT. This project as with all projects requires SEI's staff to coordinate with subcontractors and City Staff, and as such, that time allocation is included within hourly estimate of man-hours.

Printing for submittals, meetings and field reviews where the responsibility of the City of Franklin. All documents where computer generated in an AutoCAD format and reproduced in a Portable Document Format (PDF) suitable for printing.

Engineering Design Services (Lump Sum) - \$82,589.32

(Revisions for TDOT will be tracked and billed hourly not to exceed amount stated. Completed documents to be submitted no later than four weeks after SEI receives a signed agreement.)

The signature below is indication of acceptance by the City of Franklin, for additional financial compensation related to **“ADDITIONAL ENGINEERING SERVICES” inclusive of “TDOT review comments”** as provided by Sullivan Engineering, Inc, as a supplement to contract #2015-0052.

Accepted, City of Franklin: _____,

Date: _____

I hope this proposal meets with your approval. Please contact Dickie Sullivan or myself after you have had a chance to review this proposal for clarification of any questions.

Sincerely,
Sullivan Engineering, Inc.

Paul Collins

Paul V. Collins, Jr.
 Vice President